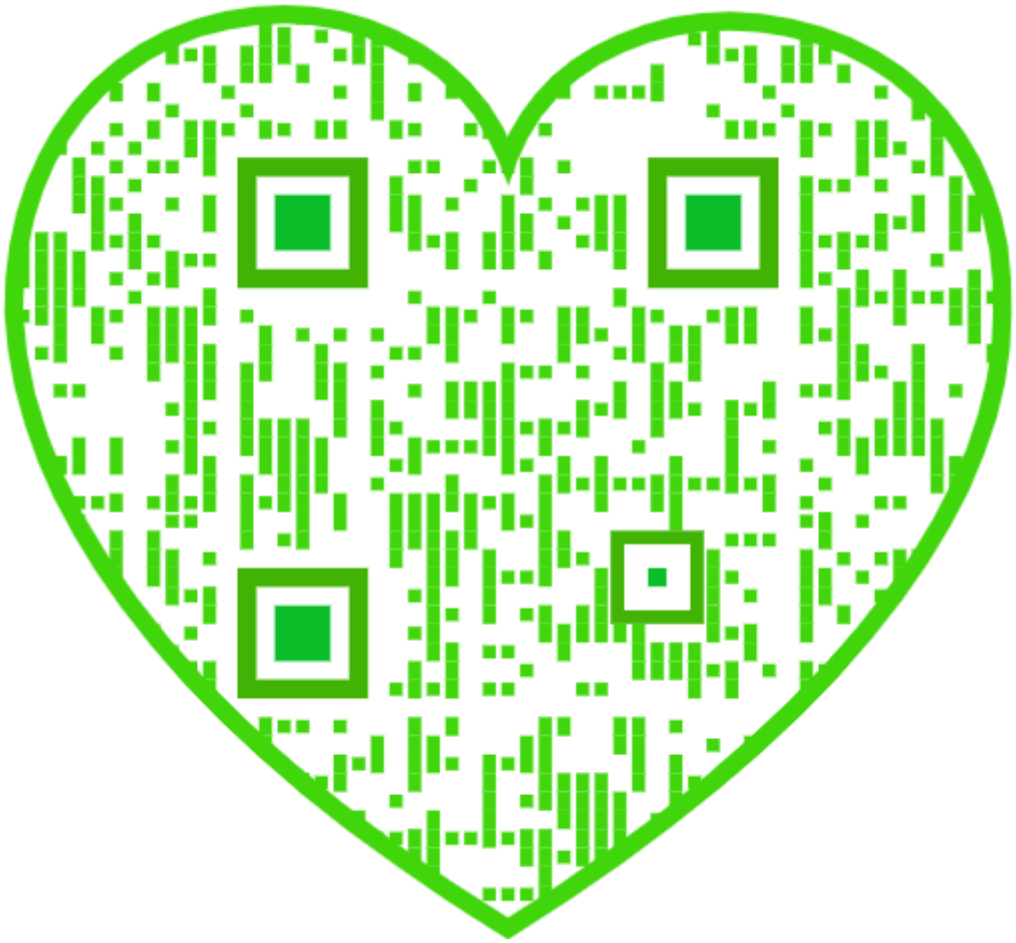

CANADIAN BANKING PRACTICE

COMPILED BY
JOHN T. P. KNIGHT

SECOND EDITION

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NOTE

Bank officials who may read these questi ..s and answers for the purpose of applying any one of same to the determining of matters of moment, are respectfully enjoined by the Compiler of CANADIAN BANKING PRACTICE *to consult their General Managers before taking any action at law or otherwise.*

J. K.

CANADIAN BANKING PRACTICE.

INTRODUCTION.

A Persian philosopher, being asked by what means he had acquired so much knowledge, answered, "By not being prevented by shame from asking questions where I was ignorant."

In 1895, the Editing Committee of the Journal of the Canadian Bankers' Association consisted of Mr. J. H. Plummer, then Assistant General Manager of the Canadian Bank of Commerce, Mr. J. Henderson, Assistant General Manager of the Bank of Toronto, and Mr. E. Hay, Assistant General Manager of the Imperial Bank of Canada, and to these gentlemen, and to Mr. V. C. Brown, who for many years acted as Editor of the Journal, its readers are indebted for a fund of useful knowledge, which the presentation of in book form will, it is hoped, serve to perpetuate and make easy of acquisition. The hundreds of questions received deal with nearly every possible point of practical interest likely to present itself during the daily routine of a bank. The replies given by the gentlemen named and by their successors in office, to the questions asked of them, necessitated a thorough knowledge of banking custom and usage, and of the general principles of the law as it appertains to acceptances, cheques, deposit receipts, endorsements, letters of credit, circular notes, warehouse receipts, partnership accounts, powers of attorney, bankers' lien, forgery, negotiable instruments, bills of exchange, promissory notes, surety, etc. It is not claimed that the reply to every enquiry appearing in "Canadian Banking Practice" is so sound and reliable as to challenge the issue of a suit at law, but as in instances where legal points were involved the advice of counsel was sought (the legal adviser

until recently being Mr. Z. A. Lash, K.C.), there is good reason for believing that the large majority of the answers appearing in this book may be safely accepted as correct and reliable.

The work of collecting and classifying the questions which have appeared in the Journal has been made easy by the extreme care displayed by Mr. Vere C. Brown during his occupancy of the editorial chair of the official organ of Canadian bankers, and the compiler of "Canadian Banking Practice" cheerfully admits that, if this book is favourably regarded by its readers, any praise bestowed upon it belongs in great measure to Messrs. Plummer, Henderson, Hay, and the present Journal Questions Committee.

It will be noticed that, in some cases, the point involved in the matter immediately under consideration appears in more than one of the published questions. Some possible variation in the replies given to such enquiries has made me refrain from suppressing any of these duplicate enquiries. I venture to think that "Canadian Banking Practice," as a work of reference, undoubtedly possesses value for bank officials. It affords information upon almost every conceivable point likely to arise in the course of dealings between banks and their customers, and in addition to the knowledge of usage and custom likely to be acquired by the student of its pages, he will be given an appreciation of the general principles of the law governing banking and commercial transactions.

JOHN T. P. KNIGHT.

CANADIAN BANKING PRACTICE.

Introduction to Second Edition.

By Mr. Jas. B. Forgan, President, First National Bank of Chicago.

In the daily course of the banking business, while much is mere routine, every one of experience knows that questions are constantly arising which necessitate an appeal to authority for guidance in the novel circumstances presented. The man who can meet such occasions and act with sense and discretion is the man who is likely to rise in his profession. In the present work Canadian bankers have a book of ready reference containing some six hundred answers to such questions by a committee eminently fitted to give authoritative advice, compiled and arranged by Mr. J. T. P. Knight, whose long experience as a practical banker and financial editor has well qualified him for such a task.

There is, of course, considerable difference between Canada and the United States, both in regard to the law and the practice of banking, but general principles are the same in both countries, and I cordially recommend a study of this book to the members of the American Institute of Bank Clerks and all others who are seeking to prepare themselves for higher and more responsible positions in the banking world.

(Signed) JAS. B. FORGAN.

CANADIAN BANKING PRACTICE.

Acceptances Payable at a Bank.

Question 1.—Can a bank legally charge at maturity to the account of a depositor having funds, an acceptance, drawn on him and accepted and made payable at the bank, without a cheque or special authorization to do so?

Could the depositor hold the bank responsible for any costs or damages arising from the bank omitting or refusing to charge the acceptance to his account without a cheque or authorization, and is the draft accepted, as aforesaid, his order on the bank the same as his cheque?

Answer.—(1) In Ontario and other provinces which are under the same law, a bank may charge such an acceptance to the customer's account. In Quebec it has been usually held that, without special authority, a bank is not entitled to charge such an acceptance to the customer; but if it is a holder of same at maturity, as its own property, the right of compensation or set off entitles it to charge it against the customer's funds. We are not aware that the right of a bank to charge at maturity a note of which it is not the holder, has ever been settled in any case that has ever come up in the Province of Quebec, but we should think it possible that it would form a sufficient answer to any customer contesting the charging of a note to his account, that the bank had on the day of its maturity paid value for it, and thereby become a holder with right of set off or compensation. In practice, however, it would not be wise to take this risk.

(2) Whether or not a bank could be held responsible for damages for refusing to pay a customer's acceptance would depend on the contract between the bank and the customer, which might either be express, or implied from a practice with regard to the customer's account of paying such acceptances. If such a contract existed, the bank would be liable but not otherwise.

Acceptances Domiciled at a Bank—Rights and Duty of the Bank.

Question 2.—Is a bank compelled to pay its customer's acceptances domiciled with it if there are funds, or is it merely authorized?

Answer.—Unless it has assumed some duty or obligation in the matter, a bank is not bound to pay its customer's acceptances even where it has funds, but it has authority to do so and charge them to his account. It has been alleged that in the Province of Quebec special authority is necessary, but we are not clear as to whether this is the case or not. It certainly is not throughout the rest of Canada.

Acceptances Domiciled at the Acceptor's Bankers—Rights and Duty of the Bank.

Question 3.—A. deposits with a bank a sum of money in open account, upon which he from time to time issues cheques. At length, however, he accepts a draft, making it payable at the bank where his funds are. When the bill falls due and is presented at the bank for payment, is the bank bound to pay for it, the acceptor's account being in funds but no authority having been given the bank to charge acceptances to his account?

Answer.—In Bank of England v. Vagliano, the judgment of Macnaghten, L.J., contains the following statement of the law in the matter:

"The relation of banker and customer does not of itself, "and apart from other circumstances, impose upon a banker "the duty of paying his customer's acceptances.

"If authority is wanted for this proposition it will be "found in Robarts v. Tucker, where it was said by the court "that 'if bankers wish to avoid the responsibility of deciding "'on the genuineness of endorsements, they may require "'their customers to domicile their bills at their own offices, "'and to honour them by giving a cheque upon the banker.' "That implies that bankers may refuse to pay their cus- "tomer's acceptances, and that such refusal is not incon- "sistent with the relation of banker and customer, or a "breach of the banker's duty to his customer."

"If a banker undertakes the duty of paying his cus-
"tomer's acceptances, the arrangement is the result of some
"special agreement, expressed or implied."

The answer to the question would therefore be that in the absence of special circumstances governing the case, the bank would not be bound to pay its customer's acceptance in the case mentioned, but it would be entitled, having paid it, to charge the amount to his account.

Acceptances Payable at a Bank

Question 4.—Has a bank a right, without special instructions, to charge to the customer's account at maturity, a note or acceptance which he has made payable at the bank? Is such a note or acceptance to be regarded as an order on the bank to pay the same?

(2) Would your answer apply to past due notes or acceptances?

Answer.—A customer who makes his acceptances payable at a bank thereby authorizes the bank to pay the same at maturity, but it is clear that such an acceptance only gives authority to pay, and does not impose a duty.

Duty to pay a customer's acceptances for which sufficient funds are not at hand might, however, arise out of the course of dealing between him and the bank.

(2) The bank should not pay an overdue acceptance without instructions from the acceptor. His relations to the other parties on the bill may be completely changed by its being overdue.

(Note.—It has been said that in the Province of Quebec a customer's note cannot be charged to his account except with his special authority, and above answer is without reference to that province.)

Drawee of a Bill not Entitled to Delay his Acceptance.

Question 5.—It has been alleged that sec. 42 of the Bills of Exchange Act gives the drawee the right to take two days to accept a bill, and to date the acceptance two days

after presentation. What is your opinion as to this, especially as to bills drawn at or after sight?

Answer.—Sec. 42 gives the drawee no rights whatever, but only declares that the holder may, without risk of discharging the drawer or endorser, wait two days for an answer from the drawer. The holder is, however entitled to an immediate answer, and may protest the bill at once if not accepted.

If a bill were refused acceptance immediately on presentation, the holder should treat it forthwith as dishonoured. The drawers and endorsers would probably be released if, after such refusal, the holder should wait two days before giving them notice.

Right of Drawee of a Draft to Date his Acceptance Two Days Ahead.

Question 6.—Has the drawee of a sight draft a legal right in accepting a draft to date acceptance at termination of the 48 hours (two days) allowed for acceptance? Could an acceptance so dated be legally refused?

Answer.—The holder is entitled to immediate acceptance, dated on the day of presentation, and if refused may treat the bill as dishonoured. The clause in question gives the drawee no rights whatever, but merely means that the holder may, if he thinks fit, give the drawee two days to make up his mind, without thereby releasing the drawer or previous endorsers.

Acceptances—Grace Must be Given when not Otherwise Provided.

Question 7.—A draft is accepted thus: "Accepted payable at . . . to mature 4th October, 1902." Does this acceptance mature on 4th or 7th October?

Answer.—Looking at the acceptance alone, we think the bill is due on 7th October. It cannot be said that it provides that there should be no days of grace, and under section 14 (*a*), Bills of Exchange Act, three days are in every case to be added to the time of payment fixed by the bill, unless the bill itself should otherwise provide.

Cheque or Acceptance Signed for a Firm by an Attorney Presented after the Attorney's Death.

Question 8.—Would a bank be justified in refusing payment of a cheque signed by, or a bill accepted by, a person holding a power of attorney for a firm and signing as such, after having received advice of the attorney's death?

Answer.—Assuming that the cheque or bill had been delivered before the attorney's death, the bank should not refuse payment because of his death.

Presentment for Payment—Reasonable Time.

Question 9.—An acceptance held by Bank A is payable at Bank B. Being unpaid at close of business on the date of maturity Bank A hands the bill to a notary for protest. The notary delays presentation until 4.30 p.m. and finds the officers of Bank B have left for the day, the payee having in the meantime provided for the payment of the bill. Can the notary protest the bill; or, if he merely "notes" it, can he collect the usual notarial fee? What would be the proper course for the banks to take under such circumstances?

Answer.—This question raises some important points, regarding which we have thought it well to get a memorandum from the Counsel of the Association, which is appended hereto.

The effect of the view which Mr. Lash takes in the case put by our correspondent is as follows:

The notary under the circumstances mentioned could not be said to have made a presentation at all, and the protest must therefore be made on the strength of the presentation which we assume was made earlier in the day by Bank A at Bank B. It is not necessary that the presentation should be made by the notary, although it is clearly an advantage that he should make it, as that simplifies the proof in case of dispute afterwards. Of course, if a notary presents a bill after banking hours and finds someone who is authorized to pay or refuse payment, such a presentation is valid notwithstanding the hour.

As regards noting, if the notary notes the bill instead of protesting it, he is entitled to whatever is the usual fee for noting and sending out the notices of dishonour, but we do not see that this has any bearing on the question as to the effect of the delay in presentation.

Time within which Presentation for Payment must be Made.

(Opinion of Counsel.)

The question as to the time during the day of maturity when a bill must be presented for payment does not appear to have come up for decision in Ontario.

The cases in England on the subject are all old ones. The section of the English Bills of Exchange Act now sets the question at rest there, as it declares that presentment must be made "at a reasonable hour on a business day" at a proper place, etc. The corresponding section of the Canadian Bills of Exchange Act is as follows:

"45. (*a*) Where the bill is not payable on demand, presentment must be made on the day it falls due.

(*c*) Presentment must be made by the holder or by some person authorized to receive payment on his behalf, at the proper place, as hereinafter defined, either to the person dsignated by the bill as payer, or to his representative or some person authorized to pay or refuse payment on his behalf, if, with the exercice of reasonable diligence, such person can there be found."

The rection relating to the presentment for acceptance is as follows:

"41. (*a*) The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance, on his behalf, at a reasonable hour on a business day, and before the bill is overdue."

It will be observed that this section contains the words "at a reasonable hour on a business day." The absence of these words in section 45, and the statement in that section that presentment for payment must be made on the day

the bill falls due leaves the question open for argument—the argument being that, as nothing is said as to the time of the day for presentation for payment, the holder has the whole day for presentment.

We think, however, that inasmuch as section 45 requires presentment to be made at the proper place either to the person designated by the bill as payer, or some person authorized to pay or refuse payment on his behalf, if with the exercise of reasonable diligence such person could there be found presentment for payment must be made at a reasonable hour, otherwise it could not be said that reasonable diligence had been exercised to find the proper person at the proper place to whom the bill could be presented.

In Parker v. Gordon, 7 East, 385 (A.D.) 1806, Lord Ellenborough said:

"If a party choose to take an acceptance payable at an appointed place, it is to be presumed that he will inform himself of the proper time for receiving payment at such place, and he must apply accordingly."

In this case the bill was made payable at a banker's, and it was not presented until after six o'clock, p.m., when the bank was shut and the clerks gone away.

In the same case LeBlanc, J., said:

"If a party will take an acceptance in this manner, payable at a banker's, he must present it at a proper time, according to the known method of conducting business, otherwise the greatest inconvenience would ensue."

A New York case, Utica v. Smith, 18 Johns, N. Y. 230, is instructive. In that case a note was payable at the Mechanics' Bank, New York City, and was presented at 3.15 p.m. The bank closed at three o'clock, but it was customary for clerks to remain after that hour during which notes were presented and paid or refused. The court said, "though the presentment was out of banking hours, it is sufficient if there was a person at the bank authorized to give the holder an answer."

The result of a number of American cases is given in the American and English Encyclopædia of Laws, 2nd edition, vol. IV., page 370, as follows:

"Where a bill or note is payable at a bank, it must be presented for payment before the usual hour of closing the banking house."

We think these authorities would be followed in Canada.

Section 8 of chapter 17 of the Acts of 1891, amending the Act of 1890, declares that the rules of the common law of England, including the Law Merchant, save in so far as they are inconsistent with the express provisions of the said Act, as amended, shall apply.

The English cases referred to show what the rule of the common law of England on the subject was, and we think it cannot be said that such rule is inconsistent with the express provisions of the Act. On the contrary, we think it consistent with it.

Domiciliation of Bills by the Acceptors.

Question 10.—May not the drawee of a draft accept it payable where he pleases? If such acceptance is not satisfactory to drawer or endorsers, can they object?

Answer.—Under section 19 of the Bills of Exchange Act, s.s. 2, an acceptance to pay at a particular specified place is in effect declared to be a general acceptance, and is one which the holder cannot refuse. This provision might give rise to difficulties, as for instance, if the drawee were to make the bill payable at some unreasonably distant place. In practice, however, it works well enough, and it protects banks against the discharge of prior parties, which might result but for this provision, though taking an acceptance naming a different place for payment from that specified by the drawer.

Cancellation of Acceptance.

Question 11.—We receive a time draft for collection, the draft is accepted in the morning and in the afternoon the drawee comes to the bank, and asks to be permitted to erase

his acceptance, saying his bookkeeper had forgotten a credit entry which he had just found out, and consequently does not owe the amount. The draft is protestable if not accepted.

Answer.—The accepting bank should never allow an acceptor to cancel his acceptance.

What Constitutes Valid Acceptance.

Question 12.—We to-day had a bill payable at a chartered bank, and in accepting the same they simply put the stamp thereon without any initials or folio. Would this be considered a valid acceptance?

Answer.—The initials and folio are [illegible]matory of the stamped certification, and while desirable [illegible]not absolutely essential.

Accommodation Endorsement.

Question 13.—A. draws a bill to the order of a bank, and C. endorses it in order that A. may be able to negotiate it with the banks. The bank discounts the bill, which is dishonoured at maturity and duly protested.

(1) Can the bank recover from C.?

(2) Can the bank's endorsee recover from C.?

Answer.—The principle involved in this question is a very important one, and as it was presented to each of our three correspondents we thought it [illegible] to obtain the opinion from Mr. Lash, which is as follows

The impression derived from the various [illegible]on the subject, on a first reading, is that the cases [illegible]nflict, and that the result of the whole is that the payee of a promissory note or the drawer of a bill of exchange cannot under any circumstances maintain an action against an endorser founded upon the instrument itself; but a more careful reading of the authorities will show that no such absolute rule can be deduced from them, and that, properly construed the cases are not really in conflict, and that, although some remarks of some judges in some cases would appear to conflict with the decision in other cases, yet the decisions

in all the cases and the principles embodied in those decisions are fairly reconcilable. The following rules or statements of the law are clearly laid down:

(1) That, in the absence of evidence to the contrary, the liabilities *inter se* of the maker and endorsers of a note, or the drawer, acceptor and endorsers of a bill, must be determined according to the ordinary principles of the law merchant, whereby the drawer and acceptor of a bill, or the maker and first endorser of a note, are liable to the subsequent endorsers.

(2) That the whole circumstances attendant upon the making, issue and transference of a bill or note may be legitimately referred to for the purpose of ascertaining the true relation to each other of the parties who put their signatures upon it, either as makers, acceptors, drawers or endorsers, and reasonable inferences derived from these circumstances are admitted to the effect of qualifying, altering, or even inverting the relative liabilities which the law merchant would otherwise assign to them.

(3) That the circumstances attendant upon the making, issue and transference of a bill or note may be shown in evidence for the purpose referred to, whether the action be upon the bill or note itself, or upon a collateral agreement between the parties.

Section 56 of the Bills of Exchange Act declares that "Where a person signs a bill otherwise than as a drawer or acceptor, he thereby incurs the liabilities of an endorser to a holder in due course, and is subject to all the provisions of this Act respecting endorsers."

By section 88 it is provided that the provisions of the Act relating to bills of exchange apply with the necessary modifications to promissory notes, the maker of the note being deemed to correspond with the drawer of an accepted bill payable to the drawer's order.

By section 29 a holder in due course is defined to be a holder who has taken a bill, complete and regular on the face of it, under the following conditions, viz.: (*a*) That he became the holder of it before it was overdue and without

notice that it had been previously dishonoured, if such was the fact; (*b*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

Sub-section (*g*) of section 2 of the Act declares that "The expression 'holder' means the payee or endorser of a bill or note who is in possession of it, or the bearer thereof."

Referring to the question asked, and assuming that the attendant circumstances were duly proven, and that the bank discounted the bill in due course, the answer is that the bank can recover from C. Assuming also that the bank's endorsee becomes a holder in due course, the answer is that he can recover from [illegible] In order to make the bank's title or that of its e[illegible]echnically regular, the bank, being named as payee o[illegible]ill, should endorse it without recourse, although it is by [illegible] means clear that this is necessary.

Under the attendant circumstances C. would be an endorser; the bank or its endorsee would be a holder in due course within the definition of section 2, sub-section (*g*), and section 29 of the Act; and under section 56, C. if not technically an endorser, would be liable as an endorser, and be subject to the provisions of the Act respecting endorsers.

Although, if the attendant circumstances be clearly shown, and the true relation to each other of the parties who put their signatures upon the bill be thereby ascertained, the payee would be entitled to recover against an endorser, yet the practice of discounting bills drawn like the one referred to in the question should be discouraged, as, owing to death, defective memory and false swearing and other reasons, it may not be possible for the bank to prove all the circumstances necessary to enable it to maintain the action, and before discounting a bill the bank should see that it is so drawn that if an action be brought upon it it will not be necessary to do more than prove the signatures so as to establish, *prima facie* at all events, the liability of the parties proceeded against.

For convenience of future reference the following cases are noted, all of which have been considered in connection with the foregoing: Steele v. McKinlay, L. R. 5 A. C. 754; Wilkinson v. Unwin, L. R. 7 Q. B. Div. 636; McDonald v. Whitfield, L. R. 8 A. C. 733; Bishop v. Hayward, 4 T. R. 470; Wilders v. Stevens, 15 M. & W. 208; Smith v. Marsack, 6 Q. B. Reports 486; Morris v. Walker, 15 Q. B. Reports 589; West v. Bown, 3 U. C. Q. B. 290; Ayr Plough Co. v. Wallace, 21 S. C. R. 256; Duthie v. Essery, 22 Ont. A. R. 191; Pegg v. Howlett, 28 O. R. 473; Robertson v. Davis, 27 S. C. R. 571; Wells v. McCarthy, 10 Man. L. R. 639; Watson v. Harvie, 10 Man. L. R. 641.

Security Given by the Maker of a Note to an Accommodation Endorser and Assigned by the Latter to the Holder of the Note.

Question 14.—A bank has discounted for A. a note endorsed by B. A. assigns to B. a mortgage to secure him for his endorsement, which mortgage B. subsequently assigns to the bank as collateral security to the note. At its maturity A. requests the bank to renew it, holding the mortgage as security and releasing B. Would the bank have a valid security in the mortgage under the circumstances, and would B. have any claim on or interest in the mortgage?

Answer.—B. would have no claim if he were released from his liability as endorser. Whether the bank's security would be good would depend on the nature of the assignments to B. and the bank. If it had been assigned to B. expressly to indemnify him against his liability as endorser then the assignment would cease to have any effect as soon as this liability came to an end, and the bank could not hold the mortgage by virtue of any rights derived from this assignment. It might have a valid claim because of its agreement with A., but in order to make the matter right the latter, whose property the mortgage is, should by proper instrument, confirm the bank's right to hold it as security.

Alteration of a Bill—Completion of a Bill.

Question 15.—If a cheque is presented to a bank by a third party, signed by the depositor in blank, and accom-

panied by the pass-book, the party presenting it stating that he was authorized to fill out the cheque for the amount of the balance, would the bank be justified in paying over the balance, on the cheque filled up by him, or by the bank at his request?

Answer.—This is, of course, not an alteration, but comes under section 20 of the Act, which authorizes any person in possession of a bill which is wanting in any material particular to fill up the omission, provided this is done within a reasonable time, and strictly in accordance with the authority given.

In the case referred to the bank in paying the cheque would be protected if the authority given by the drawer to the person drawing the cheque empowered him to fill in the amount. If this should prove not to be within that authority, the cheque could not be charged to the customer's account.

Whether the bank should take the responsibility in any particular instance is a question of expediency. No doubt in the vast majority of cases the transaction would be perfectly regular, and the surrounding circumstances generally make the bank's course clear, but if it pays such a cheque it pays on the faith of the representations made by the party presenting it, and takes the risk of any fraud that may be involved.

Alteration of a Cheque after Certification by the Bank.

Question 16.—A. draws a cheque payable to B. for $1,000; gets it certified by his bank, and sends it by post to B. B. finds he does not need it and returns it to A., but omits to endorse it. A. changes "order" to "bearer," and initials the alteration; then presents it to the bank for payment. The bank, however, refuses to pay the cheque, and allows it to be protested on the ground that the cheque has been altered since it was marked. Is the bank right?

Answer.—We think the bank is technically right, as the alteration of the cheque without the bank's consent voided it, and the bank could strictly decline to cash it. Substantially,

however, the drawer would not lose the thousand dollars. It would work out in this way: The drawer of a cheque may at any time before payment countermand the cheque, and, as between the bank and the drawer, the bank must, upon the countermand, decline to pay, and still hold the money for the drawer. If, however, the payee gets the cheque marked at the bank, then the drawer cannot countermand; but should the payee not get immediate payment, and should the bank subsequently fail or refuse to honour the cheque, the drawer would not be liable upon it to the payee. But we think that where the drawer himself gets the cheque certified he can still countermand it before he has parted with it; in other words, before the bank has become liable to anyone but himself upon it. If, therefore, in the case put, the drawer before sending the cheque to B. had changed his mind and cancelled the cheque and handed it back to the bank, the bank would have had to reverse the entry and credit his account again with the amount. The payee having returned the cheque to the drawer, and it being lawfully and beneficially in his possession, we think he would have the same right to cancel it and countermand its payment. Had he done so the bank would have been bound to restore the amount to the credit of his account, and he then might have drawn a new cheque and got it cashed. He clearly had no right without the assent of the bank to alter the existing cheque, and ask to have it cashed.

Cheque with the Amount Expressed in Figures Only.

Question 17.—The amount of a cheque is expressed in figures only, both in the body of the cheque and in the margin. Has the bank a right to refuse payment of a cheque so drawn, for which there are funds?

Answer.—We cannot find that the courts have ever considered the case of a cheque drawn as above described, but the bank's rights on the points mentioned do not depend on the law, so much as on the agreement between it and its customer, which agreement is chiefly to be implied from the course of business and the custom of banks.

The courts would probably hold that such a cheque was a valid instrument, and they might further hold that the bank was bound to honour it. We think, however, that by virtue of the custom requiring customers to express the amount of cheques in words, the contract of the bank to pay is conditional on the cheque being drawn in the usual way, and that it would be under no responsibility if it should decline to pay until the cheque was amended, especially if the reason for the refusal, and the fact that funds were held to meet the cheque when properly filled up, were explained to the party presenting the cheque. It could scarcely be said that a refusal for such a reason would work any injury to the customer's credit.

Antedated Acceptance.

Question 18.—Has the drawee of a bill, payable at or after sight, the right to antedate his acceptance, and if he does so, can the holder treat the bill as dishonoured and protest it?

Answer.—We do not think that there is any room for doubt on this point. An acceptance is qualified and discharges the prior parties, if it varies the effect of the bill as drawn. An order to pay at sight or at a given number of days after sight, would not, it seems to us, be complied with if the acceptor undertook to pay the amount at some other time, and we think the holder should refuse such an acceptance. If it were proper for a drawee to antedate his acceptance a single day, there is no logical reason why he should not antedate it a month or two months, and in the case of a draft drawn say at 60 days after sight, he might make the acceptance mature immediately—a most decided variation of the terms of the bill.

Assignments of Book Debts.

Question 19.—Would an assignment of book accounts which may be created during the year, be an effectual security, or is it necessary that the accounts should first be actually in existence and specifically assigned?

Answer.—If the assignment is properly drawn so as to cover future accounts, it will pass them as they arise. It would perhaps be well that the assignment should state the names of the prospective debtors.

Cheque or Acceptance Signed for a Firm by an Attorney Presented after the Attorney's Death.

Question 20.—Would a bank be justified in refusing payment of a cheque signed by, or a bill accepted by, a person holding a power of attorney for a firm and signing as such, after having received advice of the attorney's death.

Answer.—Assuming that the cheque or bill had been delivered before the attorney's death, the bank should not refuse payment because of his death.

Correct Form of Signature by an Attorney.

Question 21.—Which is correct of the following forms of signature by an attorney:

A.B.	A.B.	p. pro. A.B.
p. pro. C.D.	p. pro. C.D., Att'y.	C.D.

or is there a more correct form?

Answer.—The first form is erroneous; if it has any meaning it is that A.B. is signing on behalf of C.D.; the second is no better; the third form is quite correct and that commonly used in England. The abbreviation in "p. pro." or "per pro." (*pro procuratione*) signifies that the signature is affixed by the agent of and under the authority of the party whose name follows, and may be read "by authority of A.B., C.D."

There is no better form than the last quoted in the enquiry, but "A.B. per C.D.," "A.B. by C.D.," "For A.B., C.D.," "A.B., by C.D., Att'y," are all in common use, and quite permissible; the chief point is that the form employed should clearly indicate that C.D. is acting as the agent of A.B. in the matter.

Warehouse Receipts, Etc., Signed by Attorney.

Question 22.—(1) Do banks take warehouse receipts or assignments under section 74 of the Bank Act, signed by attorney?

(2) If the goods were made away with, could the principal be prosecuted criminally?

Answer.—(1) We think it is the practice of banks to take warehouse receipts or securities under section 74 given by the customer's attorney, and that such practice is proper and necessary.

(2) The customer would be liable criminally for doing away with the goods, unless he was unaware of the fact that his attorney had given security to the bank. The attorney would also be liable criminally if he personally should dispose of the goods improperly.

Bank "Agents" and "Managers."

Question 23.—What is the difference between "agent" and "manager" as applied to managers of branches?

Answer.—The term "agent" is used by some of the banks altogether in lieu of "manager," but in other cases the term "agent" is used to indicate a standing somewhat different from that of a regularly appointed manager.

Bank Draft—Right of Issuing Bank to Stop Payment at the Request of the Purchaser.

Question 24.—(*a*) A bank in Canada issues a demand draft on their agents in England, sending advice in due course. The purchaser forwards the draft to payee, but after doing so requests the bank to telegraph to the agents to stop payment of the draft. Would the agents be justified in refusing payment? If so, on what grounds?

(*b*) Can a bank under any circumstances stop payment of its own draft on its agents or another branch?

Answer.—Taking up the second enquiry first—a bank may stop payment of its own draft on its agents or another

branch so long as the drawees have not come under acceptance or otherwise obliged themselves to pay the same. Before acceptance a drawee has no responsibilities whatever to the payee or subsequent holders, and would be bound to obey the instructions of the drawer if he had not already come under some obligation in the matter.

Question (*a*) is practically answered by the above, and the fact that the question refers to a demand draft on the bank makes the case all the clearer. Whether drawn on a bank in England or a bank in Canada, the provisions of the Bills of Exchange Act respecting a countermand of payment would apply, see sec. 74 (*a*), (sub-sec. 1 of sec. 75 in the English Act). The agents would not only be justified in refusing payment on instructions, but if they disobeyed they would be unable to charge the draft to the drawer's account. In either case the holder could sue the bank as drawer, precisely as any party to any dishonoured bill might be sued.

Bank Draft—Right of Issuing Bank to Stop Payment.

Question 25.—A. purchases a draft on Toronto from a bank, and endorses it over unconditionally to B., and mails it to him. Some days later A. asks the bank to stop payment of this draft on the ground that an error of some kind has been made, the nature of which he declines to state. (1) Has the bank any power to stop the payment of the draft at the request of A.? (2) If the bank refuses this request, would A. have any ground for action?

Answer.—The bank has the "power" to dishonour its own obligation by refusing payment, but it would not be justified in doing so on the mere request of A., without explanation of his reason for making it. The bank as drawer would in any case be liable to the "holder in due course" of the draft. Whether B. would prove to be such the facts do not show, but his endorsee for value (his bank for example) would probably be.

2. A. has no ground for action if under such circumstances as are mentioned the bank should, notwithstanding his request, pay the draft.

Legal Bank Holidays.

Question 26.—What holidays may a bank observe? In the case of a civic holiday, where all the banks in the place, finding by 12 o'clock that the bills they hold have all been arranged for, close their offices at that hour, what is the result if some private holder of a bill due that day, or of a cheque, presents the same after the bank is closed, and it is thereby dishonoured?

Answer.—Banks in Canada may legally observe any holiday they choose to keep, provided that in closing up their offices they are not breaking their contract with their customers, which may be either expressed or implied. A bank which opens a current account in effect agrees with the customer that it will be ready to honour his cheques if presented within the ordinary business hours recognized among bankers. If it should without notice decide not to open or not to keep open the office on any particular business day, and the customer's cheque should thereby be dishonoured, we think it would be liable to him for damages.

The existing practice among banks, of keeping someone in the office on holidays which are not statutory holidays, to answer demands such as the above, seems to imply an understanding on this point which amounts to a contract, but this may be modified, on reasonable notice, to any degree. We would think it reasonable that banks, in common with their neighbours, should keep the local holidays, and that it should be understood that as soon as all notes and acceptances due have been arranged, the offices will be closed for the day. The closing of the offices on any day after reasonable notice involves no responsibility.

Bank Money Orders.

Question 27.—A branch of a bank which has agreed to cash orders at par, cashed a bank money order and send it to

their agents at Montreal. These agents had not entered into the agreement to cash these orders at par, and acting under the old agreement they retained half the commission for themselves. Is the bank as agent for the cashing bank entitled to half the commission?

Answer.—It is difficult to say what the legal rights of the bank would be, but we certainly think that on equitable grounds they should not collect commission.

Bank Money Orders.

Question 28.—A branch office in Ontario issued a money order in favour of a Montreal firm. The firm's bankers added and collected five cents. This bank is not reported as belonging to Bankers' Association. What right has any bank to charge on a negotiable document payable in same city?

Answer.—The bank had a technical right to collect the commission, but we think their action was not in accordance with the spirit of the arrangement among the banks with respect to these orders.

Circulation Redemption Fund—Notes Issued in Excess of Paid-up Capital.

Question 29.—Does the Circulation Redemption Fund guarantee the notes of a bank where they are (1) issued in excess of the paid-up capital, or (2) signed or issued by an unauthorized officer?

Answer.—If the notes are in either case notes of the bank for which it is legally liable, then they must be paid out of the Redemption Fund if not redeemed by the bank.

Bank Notes—Their Redemption by Bank when Mutilated.

Question 30.—What is the smallest portion of a Canadian bill that must remain to entitle the holder to its redemption at face value?

Answer.—Theoretically, if a person, without having any portion of a bank bill, can prove conclusively that he is the

owner of the bill, and that it has been destroyed, he is entitled to have it redeemed in full, on giving indemnity. In this respect he is in the same position as the owner of a lost promissory note of the ordinary kind. There is, however, this serious practical difference in dealing with lost or destroyed bank notes, that while indemnity can be given for an ordinary note, because it can be easily identified, no indemnity is practicable for a lost note, for the obvious reason that identification would be impossible.

We think that the principle followed by banks in redeeming mutilated notes is to pay them in full if satisfactory evidence of the destruction of the missing part is forthcoming. If not, and if the missing part is an important portion of the bill, it is difficult to see what claim the holder has.

Banking Hours.

Question 31.—Is it optional with a bank to close at one o'clock on any other day than Saturday, in lieu of the latter day? Do not the provisions of the Bills of Exchange Act respecting the hours at which bills may be protested impose a duty on the banks as to the hour up to which they must keep open?

Answer.—Were it not for the peculiar relationship between a bank and its customers, whereby it undertakes to make payments on their account out of the moneys in its hands on presentation of cheques, it might be said that a bank is free to close its doors at any hour that it may choose, but the fulfilment of this undertaking doubtless requires that a bank should be open at the usual hours unless it give reasonable notice to the contrary. But such notice having been given, we think it is clear that a bank may arrange to close on any day of the week at 1 o'clock, and we know that it is not an uncommon practice in the old country for banks to have their offices in small places open only on a certain day or certain days of the week.

As regards the Bills of Exchange Act, this has no bearing on the matter except so far as the hours fixed for the protesting of notes may be taken as indicating what is recognized

to be the general practice as to the hours for keeping open. The Act however, so far as this point is concerned, only refers to the hour before which a note cannot be protested—*i.e.*, 3 o'clock, and that this does not affect banks directly is quite plain. Banks usually close at 3, and although the practice of admitting notaries after 3 is a general one, we do not think that if the notary found the office locked, and protested a bill for non-payment, the bank would be under any responsibility in the matter. The most that could be said is that they had impliedly undertaken to be open till 3 o'clock on certain days of the week to make payments on behalf of their customers.

Redemption of Circulation.

Question 32.—A customer of a chartered bank in Coboconk has a cheque for $50,000 on another chartered bank in Lindsay. He wishes to take up a note in the Coboconk bank. Upon tendering the cheque he is informed that there will be $50 exchange, whereupon he goes to Lindsay, draws the cash in notes of the Lindsay bank and tenders them in payment of the note. Can the Coboconk bank refuse to take them? Or can it exact a charge that would reimburse it for the express charges to the nearest point of redemption for the Lindsay bank's notes? If the Coboconk bank cannot make a charge it is bound to be at a loss. If it had cashed the cheque at par it would have been out two or three days' interest; by not cashing it at par it is out the interest and express charges.

Answer.—The bank is not bound to accept any money in payment of a note, except such gold coin as comes within the terms of the Currency Act, notes of the Dominion Government, commonly known as legal tenders, or its own notes. It is therefore, as a matter of legal right, in a position to exact whatever charge it may choose to ask, as a condition of its accepting payment by cheque on another bank, or by notes of another bank.

Question (submitted in continuation of the subject of the above question and answer).—If bank notes are redeem-

able at par all over Canada, by arrangement at specific points and by courtesy or mutual agreement wherever a bank has a branch or there is a branch of a chartered bank, how could a charge be exacted or the notes be refused without breaking through this arrangement? Suppose they had been deposited instead of offered in payment of a note, I do not see what is to prevent any bank being loaded up with a lot of other bank notes on which it will have to pay express. If the rule applies to small accounts why not to large ones?

Answer.—In answering the previous question we had, of course, reference entirely to the legal point involved; but we would think it very much to be regretted indeed that banks should take the position of refusing the notes of other banks offered in payment of debts, when the same are presented in a reasonable way and are legitimately in the hands of the party presenting them. Probably if a case occurred where, to get rid of uncurrent notes requiring transportation to a distance, any bank should pay out such notes knowing that they were to be tendered to another bank in payment of a debt, the latter would be quite justified in refusing to take them except at a discount.

We are not aware that there is any mutual agreement between the banks that they will unconditionally redeem the notes of other banks at all points. This is undoubtedly the practice, and it would be unfortunate if anything should happen to break it; but, on looking at the matter simply from the legal standpoint, the bank need not take on deposit notes of other banks if it chooses to refuse them, and it is not bound to take any money that is not legal tender in payment of a debt. If it waives its legal rights, and accepts notes of other banks on which it has to pay express charges, this must be regarded as done because the practice fits in with the common interests of all the banks.

Notes of a Bank Circulated in a District where it is not Represented.

Question 33.—The Bank of X has a small capital and its circulation limit is frequently reached. The notes of

another bank not represented in the district are paid out by it, and as a result the other banks in the neighbourhood receive large amounts of these bills and are obliged to pay express charges to the nearest point of redemption.

Is not this a violation of the spirit of the Bank Act and also in some sense unfair to the public, who accept these bills in good faith, and find that they cannot exchange them for legal tender or gold? Why should not other banks in the district refuse to receive such bills except at a discount?

Answer.—We think that the wrong to the public may be left out of consideration, as they take the bills voluntarily in payment of debts due them, for which they have the right to exact payment in legal tender money.

The question as to the duty of the issuing bank in such a case as this, is, however, open to discussion. We think that they might very well undertake to redeem for the time being all notes of the kind they are circulating, and it would seem clear that this could usually be done without loss. If, however, the matter could not be amicably arranged in this way, we would think it open to serious objection for the other banks to refuse to accept the bills from their customers. The adoption of such a course, even under the stress of unfair conditions such as those mentioned, would be bound to disturb the public confidence in bank notes, a confidence that has been largely increased by the arrangements brought into effect at the last revision of the Bank Act. At the present time any person, in any part of Canada, who receives a bill issued by a Canadian bank, knows that he has something that he can use without question, and at its face value, whenever he wishes to pay a debt with it or deposit it in his bank, and it would be a serious matter to disturb this condition.

BANK NOTES—FRAUDULENT ISSUE OF, TO A FRIENDLY DEPOSITOR BY A BANK ON THE EVE OF FAILURE.

Question 34.—Would it not be possible for the officers of a bank on the eve of failure, without breaking the law, to pay a friendly depositor the amount of his balance in notes

of the bank on the understanding that he was not to use them until the danger had either passed or else the bank suspended, and that until the notes were presented for payment interest would be allowed as though the amount were still on deposit?

Answer.—The clauses of the Act respecting the note issue seem to cover quite fully the case you mention, although it is always possible for a fraud to be committed under them which might not be discovered. Section 51 authorizes the issue and re-issue of notes "for circulation." This would invalidate an issue made under such conditions as those you quote, as the notes would clearly not be issued for circulation, and they would probably be held, under section 53, not to give a preferential claim. We think, however, that the claim would be held to come directly under clause 52, as such a transaction would be really hypothecation of the notes of the bank by one of its officers to secure a debt, notwithstanding the form in which it was placed, and the fact that the party receiving them held them and brought them back for redemption after the failure of the bank, would be apt to lead the Court to take that view. We should think also that it would be most unlikely that a bank manager would lend himself to such a transaction, as he would thereby render himself liable to the penalties set out in section 97.

Bank Notes and Legal Tenders.

Question 35.—Is a private individual forced to receive payment of a debt in bank notes, or may he demand legal tenders to any amount?

Answer.—No person can be forced to accept bank notes in payment of a debt. He is entitled to be paid in gold coin or Dominion notes which, as their common name implies, are a "legal tender." The option of paying in gold or legal tender notes rests with the debtor. The creditor is bound to accept American gold ($5 pieces and upwards) at its face value, or British gold at $4.86⅔ to the sovereign, (in both cases good tenderable coin being understood) or legal tender notes.

Old Issues of Canadian Bank Notes.

Question 36.—Why is it that the old issues of the Bank of Nova Scotia and Merchants Bank of Halifax notes are not worth their face to-day?

Answer.—We presume that the notes referred to were issued before 1st July, 1871, and that they are consequently payable in the old currency of Nova Scotia. Such obligations are by section 10 of the Act respecting the currency, 1886, payable in the equivalent of the currency of Canada, of which 91⅓ cents is made equal to $1 of the old currency of Nova Scotia.

Canadian Bank Notes.

Question 37.—Is the custom of agencies of Canadian banks in the United States of discounting the notes of their own banks, in contravention of section 56 of the Bank Act?

Answer.—We do not think that for a foreign office of a Canadian bank to redeem its own notes at a discount is a contravention of section 56. We think it improbable that the section would be held to apply outside of Canada. There are difficulties in its application there respecting questions of legal tender, exchange, etc., that would lead to this conclusion.

Redemption of Partially Destroyed Notes.

Question 38.—By what authority in law do some banks and the Receiver-General's assistants pay torn or mutilated notes sent them for redemption, at less than the full amount?

Answer.—We do not know of any authority for the practice mentioned respecting the redemption of mutilated notes, but it is reasonable and all banks which issue notes are interested in its maintenance as a matter of self-protection. The promissory note of a bank is in law very much the same as any other promissory note, and in case of its destruction, in whole or in part, the holder would theoretically have the same right to recover as if it were the promissory note of a private person. If he brought suit in such a case

he would have to satisfy the court as to the facts and provide suitable indemnity. The provision of indemnity in connection with missing parts of a bank note is, however, difficult if not impossible, and because of this the practice has grown up of allowing a proportionate amount for the portion of the bill which is presented for redemption. It is reasonable, and it might be difficult to establish even at law a larger claim.

Canadian Bank Notes and Dominion Notes—How Payable.

Question 39.—Can anyone presenting Canadian bank notes at place of issue demand gold for same up to any amount, and similarly with legal tender notes at the place of issue?

Answer.—Anyone holding the note of a Canadian bank may demand gold for same at the place of issue. The bank may pay in gold or legal tender at its option, but should the party demand a certain proportion in legal tenders the bank must comply therewith. See sec. 57 of the Bank Act.

The place of issue in most cases means the office of the bank at which the note purports to be issued. The practice of the banks in Canada now is almost altogether to domicile the notes at the head office. A bank is not bound to pay gold for such notes at its branch offices, but it must receive them at par in payment of any debts due it. See sec. 56 of the Act.

As regards legal tender notes, the government is bound to pay their face value in gold on demand at the place at which they are made payable.

The Redemption of Canadian Bank Notes.

Question 40.—Canadian bank notes are only payable in gold or legal tender at the place of issue (usually the head office of the bank), whereas, by section 55 of the Bank Act, is it not intended that these shall be so payable at the several points therein?

Answer.—It is the duty of the bank to pay its notes in gold or legal tenders at the place of issue.

As far as section 55 is concerned, it is, of course, clear that a bank must redeem or pay its bills in gold or legal tender notes at its various redemption agencies. There is this distinction, however, to be observed, that if a bank should not have established such agencies, while it would have contravened the law and become liable to the penalties imposed under the Act, the absence of an agent to whom its notes could be presented for payment, would scarcely constitute dishonour of the notes.

The full answer to another question: What obligation is a bank under with regard to the payment or redemption of its note issues would be as follows:—A bank is bound to take such notes in payment of debts at any of its offices; it is bound, under penalties, to provide redemption agencies at certain points named in the Act, and at such agencies to pay any notes presented in gold or legal tender; and it is bound to pay in gold or legal tenders all notes presented at the place at which they are by their terms made payable. There are other obligations following on failure, etc., which need not be discussed.

GOVERNMENT BANK STATEMENT—DIRECTORS' LIABILITY.

Question 41.—Can you inform me why the wording in the bank returns to the government in regard to directors' liabilities was changed from

> "Aggregate amount of loans to and liabilities, direct and indirect, or directors and firms and partnerships in which they or any of them have any interest,"

to the present wording, viz.:

> "Aggregate amount of loans to directors or firms of which they are partners."

It has been suggested that the latter refers only to the direct liability of directors, or firms of which they are partners, and not to the indirect, as it is contended there is a difference between making a loan to a party or firm and discounting business paper for them.

Those who hold the other view do not consider there is any difference, and that the latter form of return requires just the same information former ones called for.

Answer.—The change in the government statement respecting directors' liabilities was adopted, we believe, on the ground that it was not reasonable to show the "indirect" liabilities of directors, and that a bank should not be exposed to criticism merely because it took the precaution of requiring a good endorsement on its loans, even if this endorsement were one of its own directors.

As to the difference between the meaning of the present phrase and that previously used, the chief difference is, that where a director (or his firm) is liable on paper which has been discounted for other parties, it is not now shown as part of the directors' liability. This, however, is quite distinct from the question raised, as to whether, under the present clause, business paper discounted for directors should be shown. No doubt the discounting of such paper is not, speaking strictly, a loan, but it is so regarded and spoken of in ordinary language, and we think that business paper discounted for a director or his firm should be shown as a liability. We believe that to be the general practice.

NEW STOCK ISSUED BY A BANK—ALLOTMENT TO EXECUTORS WHO ARE NOT AUTHORIZED TO INVEST MORE MONEY IN BANK STOCKS.

Question 42.—The trustees of an estate are entitled to an allotment of new stock about to be issued by a bank, at a price which would give them considerable profit, but they are debarred by the terms of the trust from investing further moneys in bank stocks. Is there anything in the Bank Act which would authorize their disposing of their rights to the new shares, or are they under any disqualification as trustees in this respect?

Answer.—Leaving out of consideration the right of the directors to make regulations respecting the transfer of shares, which would not be likely to affect the question, no

special authority in the Act is necessary to enable shareholders to sell their rights to the new shares, and trustees have the same power in this respect as other shareholders, which they would, we think, be bound to exercise.

Banking Etiquette.

Question 43.—Bank "A." sends in an item to Bank "B." due to-day for acceptance. Bank "B." accepts it, and Bank "A." immediately serds it in on their deposit of the same day. The item is for $4,500. Bank "A." asks Bank "B." for a settlement. Bank "B." protests to Bank "A." against sending in such items on deposit on the same day they are due, claiming that it is not customary to do so. Bank "A." replies that it is quite customary when the items are large and there is no clearing house in the town. The custom heretofore prevailing here was the accepting of items the day they are due and sending them on deposit the next day. What is the custom in other places in this respect?

While Bank "A." was legally justified in their action, was it not violating a regular and established custom?

Answer.—There was no impropriety in Bank "A." requiring immediate payment of the item.

Banking Hours—Standard and Solar Time.

Question 44.—The city of St. John proposes adopting Atlantic Standard time (which is 24 minutes in advance of Solar time) on 15th June, and expects the banks and business houses to regulate their hours by the new time. If the banks do so it will mean their opening at 9.26 and closing at 2.36 Solar time. Can they legally do this, or must their opening and closing hours be governed by Solar time? I understand that in Ontario many towns have adopted Standard time. Has the government passed any legislation authorizing them to do this?

Answer.—So far as the rights of a bank respecting opening and closing are concerned, it has the matter entirely in its own hands, and can open or close whenever it sees fit, provided it does not thereby commit any breach of the contract with

its customers which may be implied from the course customarily followed. This contract would be controllable by the bank on any reasonable notice of a change.

So far as we know, the only question of time which would be affected by such a change as you mention is the protest of bills, which cannot be made until after three o'clock in the afternoon. (See Bills of Exchange Act, section 51 "B"). At most places in Canada the banks close by Standard time, and the protests are no doubt made at any time after three o'clock, Standard time. The whole point involved here is whether a presentment by the notary before three o'clock is in order or not. But as notice of dishonour given by a notary would be perfectly valid whether the protest was made before or after three o'clock, the most that could result from protest made before three o'clock would be the inability to collect costs of protest.

The Dominion Parliament has not, so far as we know, passed any legislation respecting the adoption of Standard time. In Ontario it has been adopted as the legal time; R. S. O. chapter 144.

Bill Accepted by an Attorney—Right of Paying Bank to Require Lodgment of Power of Attorney.

Question 45.—In reply to your question, No. 426 (Journal No.) you say, "On the whole the practice of attaching a power to the draft seems the proper one to follow," while in replying to question No. 435 you say, "We think that as a matter of practice it is best that the power of attorney be filed at the bank at which the bill is accepted, but that it should at once send this document to the bank owning the bill if it ever has to take legal proceedings."

Do these questions refer to the form of power of attorney used by banks in order to obtain acceptance of bills drawn on parties or firms located at a distance? If so, the answers would seem to conflict.

It is the practice here to attach the powers to the bills. In my own case, I add the words "as per authority attached" when accepting the drafts.

Answer.—The two replies referred to are perhaps not quite consistent, but the first was as to the propriety of the attorney retaining the power of attorney as evidence that in accepting the bill he had not gone beyond his powers, and the second dealt with the question whether, in case such a bill is dishonoured and returned to the owner, it should not be accompanied by the power of attorney.

The two questions together might be answered thus: that until the bill matures it is most convenient that the power of attorney should be attached to it; that it should be left attached to the bill when it goes to the paying bank; but if dishonoured it had better be retained until the owner of the bill requires its production in evidence.

Bill Accepted by the Collecting Bank on a Power of Attorney. Authority to Give Power of Attorney.

Question 46.—We send advice of a bill we hold for collection, with form of power of attorney enabling us to accept the same on behalf of the drawees, to the latter, a trading company in a neighbouring town. This they returned, signed "E.... Trading Company, per J. E. Smith." We see their cheques on another bank frequently, and they are signed in this way and honoured by the bank. We accept for the drawees under this power.

Are we responsible to the owners of the bill for the validity of this acceptance, and assuming that Smith has a power of attorney from the trading company, is the above transaction a lawful delegation of his authority?

Answer.—We think you are responsible to the owners of the bill for the validity of this acceptance.

As regards the second point, the attorney cannot so delegate his authority, unless the effect of the power of attorney, taken in connection with the position of the attorney, and the nature of the business carried on, gives him power to do so.

BILL ACCEPTED BY TWO DRAWEES—RIGHT OF THE BANK AT WHICH THE BILL IS DOMICILED TO CHARGE IT TO THE ACCOUNT OF ONE OF THE ACCEPTORS.

Question 47.—A bill drawn on and accepted by two drawees is made payable at a bank. Is the bank authorized at the maturity of the bill to pay it and charge it to one of the two acceptors?

Answer.—The bank has clearly no authority (in the absence of some special agreement) to pay such an acceptance and charge it to one of the acceptors. We also think that if the bank had become the owner of the bill before maturity, and held it when it fell due, it would not (in the absence of agreement) have the right to set off the amount against one of the acceptors. "Set-off" must not be confounded with "counterclaim." If the acceptor, having a balance to his credit, should sue the bank therefor, the bank might counterclaim in the action against him and the other acceptor for the amount of the bill, and thus practically obtain payment in this way—but this depends not upon the law of set-off, but upon the practice of the court, and in some countries "counterclaim" is not allowed—the defendant must bring a cross action.

BILL OF EXCHANGE ACCEPTED BY TWO OR THREE DRAWEES.

Question 48.—A bank negotiates an unaccepted bill of exchange drawn upon three persons who are not partners. Two of these accept but the third refuses, and the draft is protested, for non-acceptance by him. The bill is not paid at maturity. What is the position of the bank as regards its claim upon the two who have accepted?

Answer.—The parties who did accept must be regarded as acceptors of the bill, and under all the liabilities which the law attaches to them as such.

BILL ACCEPTED PAYABLE AT A BANK WHERE THE PAYEE HAS NO ACCOUNT.

Question 49.—May a bank refuse to take money with which to pay a draft held by another party, from the

drawee of the same, the draft having been accepted by him payable at the bank? He has no current account with them.

Answer.—The bank is quite at liberty to refuse to take money from anyone not a customer with which to retire a note domiciled by him at the bank. No person can be forced to act as agent for another against his will.

Payment by a Bank of a Customer's Acceptance.

Question 50.—A customer of a bank has $100 at credit of his account and issues a cheque for that amount. Before the cheque is presented an acceptance for $50 is presented and is charged to his account. The cheque is afterwards presented and dishonoured on account of insufficient funds. The customer threatens suit for damages, giving as his reason that the bank was not within its right in charging the acceptance, which he did not wish paid. He has not, however, expressed such a wish to the bank. Has he any legal grounds for instituting suit?

Answer.—If the acceptance was made payable at the bank, the bank was justified in charging it to the customer's account unless specific instructions were given to the contrary.

Alteration of Date of Maturity—Days of Grace.

Question 51.—A bill dated October 1st, payable 30 days after date, is, with the consent of all parties, accepted by the drawee as payable November 15th. Does the acceptance carry three days of grace, making the bill due November 18th?

Answer.—Yes. November 15th is under such conditions the "time of payment fixed by the bill," and the acceptor is entitled to three days grace. (Bills of Exchange Act, sec. 14*a*).

Bill Accepted by an Attorney—Right of Paying Bank to Require the Lodgment of the Power of Attorney.

Question 52.—Your answer to Journal Question No. 413 seems rather equivocal, in that after saying yes, you seem to

qualify that by what follows which no one would question, because the "written evidence" might readily be a certified copy. The vital point is the surrender by the attorney of all evidence of his authority to use another's name, under circumstances in which such evidence of the existence of such authority might easily be destroyed. What if his power to use the name of another were challenged? It seems to me that circumstances might readily arise in which it might be requisite that the power of attorney should be produced by the person using it—if on behalf of the bank as one of its officers all the more so—and his inability to do so might prove exceedingly awkward, if only to prove his *bona fides*—as in the case of forgery for instance. The paying bank has recourse against the presenting bank in any event, which fully secures them, and in paying the item, I cannot see that they pledge themselves in any way as regards the power of attorney, payment being made because of a right of recourse against the presenting bank, so far as that power is concerned.

Answer.—The answer is not, we think, equivocal, as a certified copy is not "written evidence," but the point you raise is an important one.

We think that where a bank pays an obligation entered into by a customer through an attorney, it is entitled to have lodged with it the evidence of that attorney's authority, unless this evidence is lodged in an office of public record, as for instance a registry office in Ontario, or a notary's office in Quebec.

Bill Accepted under Power of Attorney—Right of Bank to Retain the Power of Attorney.

Question 53.—A bill accepted by the manager of Bank B under power of attorney from drawee is returned to Bank A unpaid, Bank B retaining the power of attorney. Bank A being compelled to sue, requests Bank B to forward the power of attorney to attach to the acceptance. Bank B refuses, on the ground that they must retain it for their protection, to prove the authority of their manager to accept

the bill, but admits it may have to be produced in court. Bank A contends that they, being compelled to recover the amount, should be in possession of the proof of acceptance, and that the power of attorney should naturally accompany the bill. Is Bank A entitled to receive it?

Answer.—We think it is quite clear that the bank which has acted on the power of attorney to accept is within its strict rights in retaining the document, but we also think that in adhering to its strict rights in such a case as you mention, when the other party concerned is a chartered bank, it is adopting a course which gives both banks needless trouble. We are not aware what the general practice is, but will invite information on this subject from the Associates.

The attorney would of course have to appear in court if necessary to prove his right to accept, and as the collecting bank would probably be liable for the bill if the regularity of the acceptance were not provable, they are of course as much interested in proving it as the bank which owns the bill.

We think that as a matter of practice it is best that the power of attorney should be filed at the bank at which the bill is accepted, but that it should at once send this document to the bank owning the bill if it ever has to take legal proceedings, and a copy certified by the official custodian, under his seal of office, furnished instead.

The bank is not ordinarily bound to pay its customer's acceptances, although it may do so and charge the customer. If, therefore, the acceptance is signed by an attorney whose authority is not signed by the bank, the bank has the remedy in its own hands.

If there should be a case where the bank has assumed the duty and obligation of paying the customer's acceptances when it has funds, then difficulty might arise. The acceptance might be made by an attorney who declines, for causes which may be quite reasonable, to lodge the power with the bank. The bank in such cases would probably be bound to pay the acceptance and preserve such evidence of the existence

of the power in the attorney's hands which might be necessary. No doubt a bank which had this responsibility imposed upon it would decline to continue the account.

As regards the necessity for the attorney to retain for his own protection the evidence that he was entitled to sign, while there may be something in this the point does not seem to us important. The existence of the authority is likely to be known to several persons and its loss would therefore not entail serious consequences. On the other hand, if the paying bank is not in a position to prove its existence, it is in case of dispute in a very unsatisfactory position. It cannot charge its customer with an unauthorized payment, nor can it recover the amount back from the bank to which the item was paid, unless it could be set up that the bank obtained payment on a representation as to the attorney's authority.

On the whole, the practice of attaching a power to the draft seems the proper one to follow.

Amount of a Bill Expressed in Figures and not in Words.

Question 54.—Would a bill be invalid because the amount in the body is expressed in figures, instead of words?

Answer.—We do not think that a bill is invalid because the amount is expressed only in figures and not in words.

"Noting" Dishonoured Bills.

Question 55.—(1) A bank hands a dishonoured bill to their notary for noting, pending an expected settlement in a few days. (*a*) Should notary attach long declaration of noting in accordance with form A in the schedule to the Act, or simply endorse a memorandum of date and ledger-keeper's answer referred to in Smith's Mere. Law, 3rd Am. ed., p. 328? Maclaren, at p. 285, would suggest the short memo., but Smith says, this "*per se* is of no legal effect." (*b*) In either case should notary send notices to the parties on the bill?

(2) Is there any sufficient sanction for the practice of protesting a bill before 10 a.m. of the day succeeding the day of dishonour as the day of dishonour—that is to say, noting and protesting it, the bank having, say, overlooked it the day before?

Answer.—(Not applicable in the Province of Quebec nor to foreign bills).

(1) We think it ought to be clearly understood that noting a dishonoured bill does not enable the bank to hold the parties to it liable pending an expected settlement in a few days. The parties are held liable only if notices of dishonour are sent in accordance with the provisions of the Act.

The practice with regard to "noting" usually amounts to the notary presenting the bill for payment on the day of maturity, and taking no further steps until the close of business the following day, by which time the note may be paid. If notice of dishonour is not given within the proper time the noting is of no effect. The only case in which evidence of the noting is needed is one where the presentment is made by one notary, and the protest has for any reason to be completed by another. Form A in the first schedule would be useful in such a case, but any memorandum showing that the bill had been presented at the place of payment on the day it matured, and the answer received, would be sufficient.

(2) We do not think there is such a practice, and if there were it would not be valid. The holder may give notice of dishonour on the day after the bill matures (sec. 49*k*), and he may employ a notary to give this notice on his behalf (sec. 49*a*), but if he invokes the aid of the notary for this purpose on the day after maturity that would not enable the latter to "protest" the bill. As the practice of the results of the notice of dishonour are identical with those following a protest, this involves no disadvantage. Similarly the effect of absence of evidence of noting, where for any reason the notary who presented the bill cannot complete his work, may be obviated by notice being given by the holder, or someone on his behalf, on the day following the date of maturity.

DRAFT—"NO PROTEST FOR NON-ACCEPTANCE." RETURN OF BILL DISHONOURED ON DAY FOLLOWING MATURITY.

Question 56.—A draft sent by Bank A to Bank B for collection with instructions—"No protest for non-acceptance" attached, was returned by Bank B to Bank A on the first business day after the maturity of the bill unprotested. Can the drawer of the bill decline to take it up on his being requested to do so by Bank A? If not, can Bank A hold Bank B liable for the amount? Under section 49, sub-secs. 3 and 4, Bills of Exchange Act, is not the return of the bill unpaid a good notice of dishonour?

The bill in question bore only the endorsement of the drawer, he having made it payable to his own order.

Answer.—As the return within the proper time of the dishonoured bill was in point of fact notice of dishonour, we do not think Bank A can refuse to take it back, and if they notify their customer within the proper time of the dishonour, either by a formal notice to that effect or by sending him the dishonoured bill, he is liable.

The rights of the parties are not affected by the fact that there is no endorsement other than that of the drawer. If Bank A's customer had been an endorser and not the drawer, he would in turn have the same right to pass on the bill to the drawer.

BILL DRAWN "AT SIGHT," WITH ONE DAY'S GRACE.

Question 57.—A draft is drawn from one of the States in the United States where days of grace have been abolished, on a party in Canada. It reads, "At sight with one day's grace, pay," etc. How should this due date be calculated?

Answer.—The draft is payable on the day after acceptance. Section 14*a* of the Bills of Exchange Act fixes the days of grace to be allowed "where the bill itself does not otherwise provide," leaving other cases to be fixed by the terms of the bill. The fact that it is drawn from a place where there are no days of grace does not affect the matter in any way.

Bill at Three Months Sent by the Holder for Collection—Neglect of Collecting Agents to Present for Acceptance until near the Date of Maturity.

Question 58.—A bill dated 30th August, at three months, drawn by A. in favour of B. on the —— Mfg. Co. in the State of New York, was endorsed by B. and discounted with a branch of the Y. Bank. It was forwarded at once by the Y. Bank to their branch at Niagara Falls for collection, and promptly sent on to the latter's Buffalo correspondents, who held it unaccepted until a few days before maturity. Acceptance was then refused, and the bill was protested and returned to the Y. Bank. The drawer and endorser claim to be released from liability because of want of diligence in the presentation of the bill. Could the amount be recovered from the Buffalo Bank, and if not, what is the position of the Y. Bank as regards the drawer and endorser?

Answer.—The above question was submitted to counsel by the Y. Bank, and by their courtesy we are permitted to publish the opinion given in the matter, as follows:—

"On this state of facts, we cannot advise that the Buffalo Bank is liable to the Y. Bank for anything more than nominal damages. If the Buffalo Bank had been a holder of the bill in the same way as the Y. Bank, it would have been under no obligation to present the bill for acceptance. Any obligation on its part to do so, arose because of its duty to the Y. Bank, as agent of the latter for collection.

"We are of opinion that the Buffalo Bank should, as such agent, have promptly presented the bill for acceptance, such a presentation being advisable from the point of view of the Y. Bank, because of the further security it would obtain should the bill be accepted, and because, should it be dishonoured, a right of immediate recourse against the drawer and endorser would accrue, and that for its want of diligence in this respect the Buffalo Bank is liable to the Y. Bank in damages.

"But, beyond merely nominal damages, the Y. Bank could not, in an action against the Buffalo Bank, recover

except for loss actually sustained by reason of the negligence of the latter bank, and, on the assumption that the bank's rights against the drawer and endorser have not been affected by the delay in presentation for acceptance, and that the drawer and endorser are financially responsible for the amount, we do not think that the bank has, in fact, sustained any actual loss by the negligence of its agent. It must be borne in mind that the Buffalo Bank was the agent of the Y. Bank only, and not of the drawer and endorser. Had the Y. Bank been bound to the drawer and endorser to use diligence in presentation, so that failure to effect prompt presentation might have given the drawer or endorser a remedy against the bank, then, it might well be that the Y. Bank would have a corresponding remedy against its agent, but, on the state of facts given us, this does not appear to be the case.

Acceptance of Bills Drawn "on Demand."

Question 59.—(1) Is a bank justified in paying an acceptance drawn "on demand" and accepted payable at the bank and dated a certain day—if same is presented two or three days after the date of its acceptance?

(2) Is a demand draft of the nature of a cheque after it is accepted, or does it become past due if not presented where it is payable, on the day the acceptance is dated?

Answer.—(1) We think a bank is justified in paying on behalf of a customer a demand bill which he has accepted payable at the bank, if presented two or three days after the date of his acceptance.

(2) We do not think a demand draft is of the nature of a cheque after its acceptance. Section 45 of the Bills of Exchange Act indicates that if not presented within "a reasonable time" it must be regarded as an overdue bill. We do not think that this would necessarily involve that the bank should refuse to pay it if presented after a reasonable time had elapsed, but it would be more prudent ', ask instructions from its customer before doing so.

The same question might arise in the case of an overdue acceptance not payable on demand. The fact that it is overdue does not lessen the liability of the acceptor to pay, and we should suppose that the bank to which it was presented would be entitled to pay and charge the item to his account, but it would be the more prudent course to refer such bills to the acceptor first, as he might have some defence or offset available against an overdue bill.

Bills Drawn on Two or More Drawees Alternatively or in Succession.

Question 60.—A draft is drawn on

(1) John Smith or
Joseph Brown.

(2) John Smith, or failing him,
Joseph Brown.

Would not these, under section 6, sub-section 2, of the Bills of Exchange Act, be simply orders for the payment of money and not bills of exchange? What would be the holder's rights against the drawer and acceptor?

Answer.—Drafts in either of these forms would not be bills of exchange. The first is addressed to two drawees alternatively, and the second to two drawees in succession.

As to the right of the holder against the parties, we think that they would constitute on the part of the quasi acceptors a contract to pay the money, which could be enforced in the same way as other contracts are enforceable. As to the drawer, we do not see on what ground the holders could sue him unless they had an understanding with him apart from the order itself, which would make him liable. The rights and liabilities of the parties on these documents would be entirely outside the law respecting bills of exchange.

Acceptance of Bills Drawn "on Demand."

Question 61.—(1) Is a bank justified in marking an acceptance drawn "on demand," and accepted payable at the bank and dated a certain day—if same is presented two or three days after the date of its acceptance?

(2) Is a demand draft of the nature of a cheque after it is accepted, or does it become past due if not presented where it is payable, on the day the acceptance is dated?

Answer.—(1) We think a bank is justified in paying on behalf of a customer a demand bill which he has accepted payable at the bank, if presented two or three days after the date of his acceptance.

(2) We do not think that a demand draft is of the nature of a cheque after its acceptance. Section 45 of the Bills of Exchange Act indicates that if not presented within "a reasonable time" it must be regarded as an overdue bill. We do not think that this would necessarily involve that the bank should refuse to pay it if presented after a reasonable time had elapsed, but it would be more prudent to ask instructions from its customer before doing so.

The same question might arise in the case of an overdue acceptance not payable on demand. The fact that it is overdue does not lessen the liability of the acceptor to pay, and we should suppose that the bank to which it was presented would be entitled to pay and charge the item to his account, but it would be the more prudent course to refer such bills to the acceptor first, as he might have some defence or offset available against an overdue bill.

Place of Payment of an Acceptance.

Question 62.—A bill dated at Woodstock and drawn on a party in St. John reads:

"Pay to the Merchants Bank here the sum of ."

Is this bill payable in Woodstock or St. John?

Answer.—It might be argued that "here" qualifies the order to pay, that is, that the bill is an order to pay the money in Woodstock. We think that the word "here" must be regarded as part of the description of the bank, that is, that the bill should be read as if made payable to the "Merchants Bank, Woodstock." The place of payment not being designated on the bill it should be presented for payment to the acceptor.

Bill Drawn Payable at One Bank, and Accepted Payable at Another.

Question 63.—A draft drawn as follows: "Pay to the order of myself at the Canadian Bank of Commerce, Montreal," is sent to the Merchants Bank of Canada, Montreal, for collection, and accepted payable at the latter bank. Where should the draft be presented when due? Should the latter pay it, seeing that there may be doubt as to where it is really payable?

Answer.—Section 19, 2*a*, declares this acceptance to be "not conditional or qualified," therefore it is a general acceptance, that is, an unqualified assent by the drawee to the order of the drawer, in this case, and undertaking to pay as the drawer has instructed, namely, at the Canadian Bank of Commerce. The bill may therefore be presented for payment at the latter bank.

Sub-section 2 of section 45 (see *d* 1) declares that where a place of payment is specified in the bill or acceptance, and the bill is there presented, such presentment is properly made. Under this rule it would seem proper to present the bill at the place named by the acceptor, so that the effect of the whole is to give the holder the right to present for payment at either place. The provisions in the Act were evidently intended to legalize the previously existing practice of naming the place of payment in the acceptance, and not in the body of the bill (a practice of unquestioned convenience), and there has been no case before the courts since, where a different place of payment has been named in each. As the cases must be rare we should think it best to present such acceptances at both places named and so avoid all doubt.

There is, we think, no question of the right of the bank at which the acceptor has domiciled the bill to pay it on his behalf if this payment is otherwise in order. In doing so it is acting on the acceptor's authority.

Bill Payable "Two and One-half Months after Date."

Question 64.—What do you think is the correct due date of a bill dated 24th August, 1899, and payable two and a-half months after date?

Answer.—Two months from August 24th would be 24th October, and apparently the question to be determined is when a half month from the latter date would end. In our opinion this is not determinable, and the bill in consequence is not a bill of exchange within the meaning of the Act, as it is not payable at a fixed future time.

Bill Drawn to Mature on 31st October (including grace) Accepted "Payable 31st October."

Question 65.—A bill dated 28th August, and payable two months after date, which would make it due on 31st October, is accepted by the drawee, who adds to his acceptance the following words: "Payable 31st October." Does this affect the due date?

Answer.—We presume our correspondent thinks that if the acceptor's statement is to be treated as part of the bill, three days of grace must be allowed after 31st October, but we do not think that it has this effect. The bill, according to the Act, is "due, and payable on the last day of grace," and the acceptor has merely noted this in a concrete form.

If it were otherwise, the acceptance would not be one which the holder should take.

Letters of Credit—Drafts Thereunder Paid at the Current Rate of Exchange for 60-day Bills.

Question 66.—Referring to the practice of cashing drafts drawn under letters of credit, "at the current rate for 60-day bills," where Bank A cashes a draft under a credit issued on Bank B, must Bank A accept whatever rate Bank B may claim to be the current rate at the point at which the credit is drawn?

Answer.—The proper way to regard the matter is no doubt this, that drafts under letters of credit payable at "the current rate of exchange," are to be cashed at the best rate at which the bank would buy a 60-day bank bill on England. The holder is clearly not bound to take an inadequate rate from the drawee, but unless the latter will make

himself liable by some undertaking in the nature of an acceptance, the holder would have to look to the drawer or issuer of the credit for reimbursement.

Bill Held for Collection—Assignment of Drawee before Maturity of Bill.

Question 67.—Bank A sends for collection to Bank B, draft or note (to be protested in case). Drawee or maker assigns before maturity. What would be the position of Bank B to Bank A on the following points?

(1) Should draft or note be returned by Bank B on the assignment becoming known?

(2) If so, may not protest be waived to save unnecessary cost under the circumstances?

(3) Would it be correct to simply advise Bank A of the assignment, asking for instructions or what option has Bank B in the matter?

Answer.—(1) We think that the duty of Bank B is to protest the note at maturity and return it, in the absence of other instructions.

Bill for Collection Recalled after being Marked Good.

Question 68.—A bill is presented by a collecting bank on the morning of the day it falls due, and is duly "marked good" by the bank at which it is accepted payable. Later in the day the collecting bank receives a telegram from their correspondent to return the bill. What is the proper course for the collecting bank to pursue in view of the fact that the bill has already been marked good?

Answer.—The bank's duty in such a case clearly is to advise its correspondent of the acceptance of the bill by the bank at which it is payable, and to ask further instruction. It should not permit the cancellation of the "marking" in any event.

Bill for Collection—Should be Endorsed by Banks Sending Same for Collection.

Question 69.—A bill is sent for collection bearing on the face the stamp of the bank which sent it. The stamp shows the name of the bank, the branch, etc. The item is not made payable to the sending bank, and is not endorsed by it.

Has the bank receiving this bill for collection any right to object?

Answer.—One of the responsibilities assumed by the collecting bank is the return of the money, should the prior endorsement prove to be forged or unauthorized. On this ground they might properly ask that the bill should be endorsed to them by the bank sending it for collection, so that their recourse might be clear.

Acceptance Held after Maturity by Request of Prior Parties—Protest.

Question 70.—An acceptance is by arrangement with the prior parties held for ten days after its maturity without being protested, but at the expiration of that time the drawee is still unable to pay. Is it necessary to then protest the draft in order to avoid releasing the drawer or endorser?

Answer.—Assuming the bill to be an inland one, no protest is necessary. Notice of dishonour, to be effective, must be given at maturity, and the holding of the bill by agreement for ten days does not alter this. If the "arrangement" amounted to a waiver of notice, or an admission of the receipt of notice of dishonour (which it no doubt did) the parties continue liable on the bill whether asked to repay it or not. They would only be discharged from this liability, under ordinary circumstances, by the Statute of Limitations (or payment).

Bill Held after Maturity by Collecting Bank on Instructions of Owner.

Question 71.—A Winnipeg bank negotiates a draft drawn by one of its customers on a house in Kingston, and

sends it to a bank in Kingston for collection. At maturity, the Winnipeg bank wires the Kingston bank, "Hold free seven days if not paid." The Kingston bank has a running account with the Winnipeg bank, and if the bill were paid would simply credit the amount without advice. The Kingston bank holds the bill without protest for seven days after maturity, in accordance with telegraphic instructions, but without advising or acknowledging the telegram.

If the bill is still unpaid at the end of seven days ought it to be protested, and is the drawer entitled to the same notice of non-payment at the end of the seven days as he would have been at maturity?

Answer.—The bill could not be protested at the end of the seven days, the time for that being past. The duty of the Kingston bank is to return the bill to the Winnipeg bank at the expiration of the seven days, or to notify it then that the bill has not been paid. If it neglected to do this, and the Winnipeg bank was misled into believing thereby that the bill was paid, and allowed the drawer to act in the same belief, the Kingston bank would probably be bound to give the Winnipeg bank credit for the bill.

Payment by a Bank of a Bill on a Customer not Accepted by Him.

Question 72.—A bank has authority to pay the acceptances of a customer, and through an error has marked and paid a draft on him which had never been accepted. Has it any recourse, or must it abide by its error?

Would "Steele v. McKinley" apply?

Answer.—Where a bank has voluntarily made a payment on behalf of a customer we are of opinion that, unless there is some special reason to the contrary, they cannot get back the money from the party to whom it was paid, although we think they could in this case have corrected their error if the draft had been only marked good and not paid. The customer could ratify their act, but if he refused to treat the payment as properly made on his behalf the bank is left to any equitable rights it may have.

It seems to us, however, that the error should not necessarily involve a loss. Either the bill is drawn for an amount which the customer owes, in which case the paying bank might get an assignment of the drawer's claim on the drawee, or the latter might very properly ratify the payment; or it is a bill the payment of which by the drawee would entitle him to claim back on the drawer in whole or in part, in which event there should be some arrangement possible between the drawee and the bank which would protect the latter.

"Steele v. McKinley" does not help the matter.

Accepted Bill of Exchange with Bill of Lading Attached—Goods not up to Sample.

Question 73.—A bank holds a bill of exchange accepted by the drawee, to which is attached a bill of lading for wheat to the order of the bank. Before the bill matures the drawee finds that the wheat is not up to the sample and refuses payment. Is the acceptor's obligation on the bill affected by the defect in the security?

Answer.—Unless the acceptor could raise such a case against the bank, as would entitle him to repudiate his acceptance *in toto* on the ground of fraud or misrepresentation, we think that he is liable for the full amount of the bill. Any remedy he has would be against the person responsible to him for the defect in quality of the wheat.

Note.—With further reference to the above question the draft in question has stamped across it "documents attached to be surrendered only on payment of draft," and written on it by the manager of the bank which holds it, the words: "Bill of lading attached, 500 bushels wheat, car No. 1,524." These additions to the draft were on it when it was presented for acceptance and the bill of lading described was attached. The acceptor claims that the words written and stamped on the draft by the bank entitle him to look to the bank for delivery of the wheat described in the bill of lading, and that the bank is in no better position to enforce payment of the

draft than the drawer. Is this so, and is the bank in any way responsible?

Answer.—We think not. Even if the phrases mentioned were to be taken as representations held out by the bank to induce the drawee to accept, they would be fulfilled by the surrender on payment of the bill, of the bill of lading actually attached at the time it was accepted.

Bill of Exchange Payable to a Married Woman in the Province of Quebec.

Question 74.—May a cheque or bill, payable to a married woman residing in the Province of Quebec, whether she has, or has not, a marriage contract, be properly paid or negotiated on her endorsement alone, and without her husband's consent?

If the act of payment or negotiation took place outside of the Province of Quebec, would that make any difference in the position of the parties?

Answer.—We are aware of opinion that the provisions of the Bills of Exchange Act must govern with respect to the powers of a married woman in the matter of endorsing or negotiating cheques and bills of exchange, and wherever these differ from the Quebec law they must prevail.

So far as her capacity to incur liability as an endorser is concerned, the Act leaves the matter untouched. Section 22 makes "capacity to incur liability co-extensive with capacity to contract." If under the code she is not able to contract, her endorsement on a bill does not create any liability on her part as an endorser.

This does not, however, affect her power to endorse or negotiate a cheque or bill in such a way that the drawee may lawfully pay it, or the transferee become the lawful holder.

Under sections 54 and 55 of the Act, both the acceptor and the drawer are precluded from denying the capacity of a payee to endorse, and a subsequent endorser is precluded from denying the regularity of the previous endorsements. Under these sections, therefore, if a bank should accept a

cheque payable to a married woman, it is bound to pay it on her own endorsement, for it is precluded from denying her capacity to endorse. If the bank is so bound it clearly has the right to charge the cheque when paid to the drawer's account, but apart from this the drawer also is precluded from denying the capacity of the payee to endorse.

Considering that a bank is bound to pay its customers' cheques according to their tenor, and that in making a cheque payable to a married woman, the drawer in effect declares (because of such preclusion) that the amount is to be paid to her notwithstanding any disability she may be under, we think that a bank in the Province of Quebec is not only not bound to require the husband's authorization, but might be liable to its customer for damages should it refuse his cheque because of the absence of such authorization only.

The question being a very important one, we thought it well to submit it to counsel in the Province of Quebec, from whom we received the following reply:

"I am of opinion that under the law of this Province "the wife may endorse so as to pass the title to a bill of "exchange, even though she does not make herself liable, "and that a plea of her incapacity could not be raised by "an endorser, drawer, or acceptor, as they are precluded "from doing so by the Bills of Exchange Act, sections 54 "and 55."

As regards the second part of the question, the effect of payment or negotiation outside of the Province of Quebec, we think that the relative rights of the parties would depend upon the law where the transaction took place. A married woman is under no disability that would call her endorsement into question in any Province other than Quebec.

Bill of Exchange—Requirement as to the "Sum Certain in Money."

Question 75.—Do you consider a draft drawn payable "with bank charges" negotiable?

Answer.—We would not consider this to be a bill of exchange. Section 9 (*d*) of the Bills of Exchange Act

declares the sum payable by a bill to be "a sum certain" if it is payable according to a rate of exchange to be ascertained as directed by the bill. This is the only provision in the Act which could be looked to to support the proposition that a bill payable "with bank charges" is for a sum certain, and we do not think that it would come within this section.

Bill of Exchange; Time of Payment Depending on Arrival of Goods.

Question 76.—Would you consider the following form of draft advisable: "Sixty days after arrival of goods at destination pay to the order of ———"? If so, what evidence should the bank collecting the item be expected to get in order to fix the due date?

Answer.—A draft in the above form would not be a bill of exchange within the meaning of the Act; it is not payable at a determinable future time, since the goods might never arrive. The bank would therefore have no rights against the drawer or endorser arising out of the law respecting bills of exchange. It would be much better the bill should be drawn at sixty days sight, with an agreement that the collecting agents should hold it for such time as they might consider reasonable pending the arrival of the goods.

Bills of Lading as Security.

Question 77.—A bank receives from the shipper of goods a bill of lading (railway receipt) issued by a railway company for goods deliverable to a third party, as security for a draft drawn on the party to whom the goods are shipped. In the event of dishonour can the bank because it holds the receipt, get possession of the goods without the consignee's authority, or can the shipper get the goods without the surrender of the railway receipt by the bank?

Answer.—The duty of the railway company would be to deliver the goods to the person to whom they have been shipped, and they would ordinarily, we believe, deliver them without production of the receipt. If he refuses them, they

would, no doubt, be justified in delivering them to the shipper. The possession of a receipt or a bill of lading in this form would not, we think, give the bank any rights as against the railway company to get back the goods.

Bills of Lading as Security.

Question 78.—Please consider the following points connected with grain shipments from the interior of Ontario to millers and grain dealers at the centres. As the grain has usually to be paid for with money advanced by the shipper's bank, I shall be glad if you will give your opinion as to the propriety of the modes of business described.

1. The purchaser of the grain sometimes sends a form of receipt to be filled by the railway company, in which he is described as the shipper.

2. (*a*) Sometimes in addition to the purchaser being named as the shipper, the goods are shipped to the order of his bank. (*b*) In other cases, where the real shipper's name is given, the grain is shipped to the order of the purchaser's bank. (*c*) In a third class of cases the purchaser asks that the goods be shipped in his name as shipper, and to his order.

Query 1. Would a bank advancing money to its customer against the lodgment of bills of lading for grain purporting to be shipped by another party, but to the order of the lending bank, get proper security on the grain?

2. What would be its position in the three cases mentioned in the second clause?

3. Would the shipping of the grain in the purchaser's name deprive the true owner of the right of stoppage *in transitu*?

Answer.—This question cannot well be answered in any general way. The conditions might differ in almost every case, and an opinion could only be formed on consideration of the exact facts involved.

It may be stated generally that the wording of the form of the receipt or bill of lading, and the manner

of and entitled to control the grain, he can, by proper means, give the bank valid security. The security would not, in any of the cases mentioned, be straight and free from ambiguity, and we think that the bank should not accept such security. As to question No. 3, we do not see how the real owner could control grain in the hands of a carrier, which he has stated to be the property of someone else.

We think the mode of doing business indicated by these questions open to serious objections, unless both the owner of the grain and the bank have a clear understanding with the purchaser of the grain, and with his bank, if the latter is brought into the question.

BILL OF LADING OBTAINED FROM A CARRIER BY FRAUD AND HELD BY A THIRD PARTY AS SECURITY FOR AN ADVANCE.

Question 79.—Where a bill of lading issued by a public carrier to the order of a shipper, signed by the usual officer, is obtained by fraud, can the carrier defend the claim of an innocent holder who has made an advance against the same by contending that their clerk exceeded his authority in giving a receipt for goods that do not exist?

Answer.—Under the circumstances stated in the question, the carrier would have a good defence to an action by the innocent holder of a bill of lading. The case of Erb v. Great Western Railway Company, reported in 5 Supreme Court Reports, page 149, is directly in point. The court (two judges dissenting), held that a railway agent giving a fraudulent bill of lading for goods not received by him was acting outside the scope of his employment, and that his action therefore did not bind the company.

For the present the point must be taken to be definitely settled by authority, although the views of the judges who decided the above case have been the subject of much adverse criticism among lawyers.

Since the above case was decided the House of Lords has held that even where there is no fraud, and only a mistake on

the part of the master of a ship in signing a bill of lading for a stated quantity of goods, the owner, in the event of shortage, can relieve himself of his liability to the extent of the value of the goods which he is able to show were never delivered to the master. Smith v. Bedouin Steamship Company, 1896, Appeal Cases, 70.

BILL OF LADING TO THE ORDER OF A BANK—GOODS DELIVERED BY THE CARRIER TO SOMEONE OTHER THAN THE BANK WITHOUT THE LATTER'S AUTHORITY.

Question 80.—A bank cashes a draft accompanied by a bill of lading drawn to the order of the bank. If the carrier should deliver the goods to someone other than the bank, can he be held accountable by the bank?

Answer.—Assuming that by a bill of lading drawn to the order of the bank is meant a bill of lading in which the bank is named as consignee, the carrier could be held accountable. R. S. O. cap. 145, sec. 5, sub-sec. 1, enacts as follows:

"Every consignee of goods named in a bill of lading and "every endorsee of a bill of lading to whom the property in "the goods therein mentioned passes upon or by reason of "such consignment or endorsement, shall have transferred to "and vested in him all rights of action, and be subject to "the same liabilities in respect of the goods as if the con-"tract contained in the bill of lading had been made to "himself."

PART PAYMENT OF A BILL—RIGHTS OF HOLDERS AGAINST PRIOR PARTIES.

Question 81.—Can a bank accept part payment of a bill and reserve its rights for the balance against the endorsers by protest or notice of dishonour?

Answer.—There is no statutory provision on this point, but the holder of the bill unquestionably has a right to take a part payment and look to the drawer and endorsers for the balance.

Bills Payable in Sterling Drawn on Points in Canada.

Question 82.—(1) Can a bank legally pay a demand draft, payable in sterling, drawn upon it by an English bank, at a less rate than that provided in section 71 (*d*) of the Bills of Exchange Act?

(2) At what rate should a cheque be paid when drawn in sterling though otherwise upon an ordinary cheque form, dated, say, Toronto, and sent for collection by an English bank?

Answer.—(1) The rate at which a bank should pay a sterling demand draft, drawn on it by an English correspondent, is fixed by section 71 (*d*) of the Bills of Exchange Act. If the bill is drawn simply for so much sterling money without any reference to a rate of exchange, it should be paid at the rate for sight drafts at the place of payment on the day the bill is payable. If, however, it is payable at "the current rate of exchange," this does not necessarily mean the demand rate. Sixty days' sight has always been the "usance" between England and this country, and we think the 60-day rate would probably be accepted by the courts as "the current rate of exchange." If there seems to be any conflict because of the bill being payable on demand, it will disappear if the bill is read in this way: "On demand pay to ——— pounds sterling, calculated at the 60-day rate of exchange."

(2) It would be unusual for a cheque to be drawn in Canada, upon a Canadian bank, payable in pounds, shillings and pence. If such a cheque were drawn we think the bank would have the right to refuse payment, but it would probably be justified in regarding it as an order to pay the currency value of a similar amount of British gold, *i.e.*, to convert the sterling money at $4.86\frac{2}{3}$. In remitting to an English correspondent for such a cheque it would have to be treated as drawn for the amount in Canadian currency computed as above, and the exchange calculated accordingly.

STERLING BILL PAYABLE AT THE CURRENT RATE OF EXCHANGE.

Question 83.—(*a*) A bill of exchange is drawn by a firm in London, England, on a merchant in Canada, in sterling, at sixty days' date, to be paid at maturity at the current rate of exchange. When this bill falls due what rate of exchange should be taken in converting it into our currency?

(*b*) In the event of there being a difference between the sterling rates of the presenting bank and the bank at which the bill is made payable, could the latter bank tender the holder of the bill in payment a demand draft on London, England?

Answer.—(*a*) See answer (1) to question 82.

(*b*) A bill drawn on a party in Canada, payable in sterling money, can only be paid in lawful money of Canada. The holder is not bound to take a draft on London. The obligation is one which the acceptor must meet in legal tender money, which, of course, a draft on London is not. Any dispute as to the rate must be settled just as other similar disputes are settled, in the last resort, in a court of law.

STERLING BILL PAYABLE "AT THE CURRENT RATE OF EXCHANGE."

Question 84.—A sterling bill on a Canadian house drawn at three days' sight is expressed to be payable "at the current rate of exchange when due." Is this payable at the 60-day or demand rate?

Answer.—For the reason set out in our reply to question 82 (1) we think this bill is payable at the 60-day rate. The usance between Canada and Great Britain is 60 days' sight, and in our opinion "the current rate of exchange" refers to the rate for that usance.

STERLING BILLS—RATE OF EXCHANGE.

Question 85.—What is the correct rate (demand or 60-day) to charge on a sterling acceptance when due? Why, custom or law?

Answer.—Under section 71, sub-section 6, of the Bills of Exchange Act, the rate fixed for such bills is the sight rate, unless otherwise expressly stipulated.

If a bill is drawn for so many pounds sterling simply, it would be payable at the sight rate.

If for so many pounds "at the current rate of exchange," that is a stipulation which fixes the rate. The "current rate of exchange" between Canada and Great Britain is the 60-day rate, that being the established usance.

Ninety-Day Bills—Rate of Exchange.

Question 86.—What is the proper rate for a 90-day bill on London as compared with a 60-day bill, and how is it calculated?

Answer.—The difference between a 60 and a 90-day bill should be about half the difference between a demand and a 60-day bill. The difference in each case depends chiefly on the market discount rate in London. There are, however, minor considerations which modify the effect of the rate, as long bills sometimes command a more favourable discount rate than the shorter bills and sometimes a less favourable.

Generally speaking the difference between demand and 60-day bills is 60 days' interest at the current market rate in London, the difference in stamps also being allowed for; and between 60 and 90-day bills, 30 days' interest at the same rate.

Current Rate of Exchange—Sixty-Day Rate.

Question 87.—In many instances demand letters of credit drawn in Great Britain payable at the "current rate of exchange" are redeemed in Canada at the 60-day rate. I can see nothing to justify this. The usance between Canada and Great Britain is a thing of the past. In the old days of sailing vessels the interpretation of "payable at the current rate of exchange" referred to the 60-day rate, but the Atlantic Cable or "Ocean Greyhounds" were not thought of in those days.

The question I would like answered is this: "Would the courts sustain the action of the banks in only paying the 60-day rate for demand bills payable at the current rate of exchange?"

Answer.—There are two distinct aspects from which this question can be considered; the first is the legal meaning of the phrase "current rate of exchange;" the second is the fairness or otherwise of the contract when so interpreted. We have already discussed the first aspect fully, and can only say that we think the court would find the meaning well established, and would not discuss its abstract fairness. The phrase has been in use for a century or so; its universally accepted meaning, up to recent years at any rate, is well known; it is very generally accepted now as meaning the 60-day rate; and it is difficult to see just at what point it could have ceased to have that meaning.

As to the fairness of such a rate, that depends on the circumstances. One who buys a sterling draft in England, and through ignorance expects to get as much Canadian money in exchange as if he had brought sovereigns, is no doubt disappointed, but why should he expect this? He gets his £100 bill or credit for £100; even if he buys it at an inland point the commission to the local bank is (usually) paid by the bank which draws the bill or issues the credit. When the English market rate for money is low and the difference between the sight and 60-day rate narrow, there does not seem to be any hardship in the bank getting that difference for the use of the facilities it furnishes. It may be an unreasonable charge when the difference is large, but credits are usually for small amounts and the result in money is not usually unreasonable.

As regards bills drawn in Great Britain against sales of goods, the drawer can (and usually does) fix the rate according to his understanding with his Canadian customer.

Our view briefly is that the phrase "current rate of exchange" means the 60-day rate; that this for letters of credit for moderate sums affords only a reasonable profit; that for larger amounts the charge is, under the altered

conditions, more than the service warrants and that the difficulty is one to be met with by reasonable concessions, as has been done at Montreal and Toronto.

Bill Payable "—— Months and a half after Date."

Question 88.—Would "——— months and a half after date" be a good bill?

Answer.—There have been no judicial decisions as to the effect of an order for the payment of money at "——— months and a half" after date or sight, and we find it somewhat difficult to form an opinion in the matter. Should a case come before the courts they might decide that a half month should be taken to mean some arbitrary period, such as 14 days. We think, however, that each case would have to be judged on its own merits, and that if the half month which the document covered was determinable, it would be a bill of exchange; but if not, then it would not be a bill of exchange, one of the essential features of which is that it is payable at "a fixed future time."

As an example take a bill dated 10th January, payable three and one-half months after date. This, we think, would be due on 25th April, 15 days being clearly one-half of the month of April. If the bill were dated 25th January it would be impossible to say what the half month would be.

When is a Bill Protestable.

Question 89.—At a point occupied by a chartered bank only every other day, is the day next the maturing date of a bill the proper date to protest for non-payment when the due date falls on the day the bank is not open for business, or in other words, are the days when the bank is not open to be treated as a statutory holiday and protest the day following binding?

Answer.—The bill is protestable only on the day of maturity.

BILL RECEIVED FOR COLLECTION WITH "NO PROTEST" SLIP ATTACHED—NO INSTRUCTIONS IN ACCOMPANYING LETTER.

Question 90.—A bill received for collection has a "no protest" slip attached, but in the letter enclosing it no reference is made thereto. Should not the letter govern?

Answer.—We think not. The slip accompanying the bill should be regarded as properly sent unless the letter showed the contrary. We think the bank in the case put should be careful to return the bill before the close of business on the next day, and then no interests would be injured by returning the bill without protest. The party receiving back a dishonoured bill is in a position to give notice to the prior parties, and so keep everybody on the bill liable to him. This would not, however, apply to the Province of Quebec, where protest is necessary.

BILLS DRAWN ON CANADA "PAYABLE WITH EXCHANGE."

Question 91.—A sight draft for $1,000, drawn in New York on a firm in New Glasgow, "payable with exchange," is sent to a bank in Halifax, thence to the agency of another bank in New Glasgow. The latter agency presents bill and demands ¼ of 1% exchange. On the day the draft is presented other banks in New Glasgow offer to sell drafts on New York for 1-8 of 1%. Can the bank presenting collect more than 1-8 of 1% as exchange? You might also state whether the fact of the draft having been sent through a bank in Halifax, makes any difference as to the rate of exchange.

Answer.—Assuming that what the draft means is that the acceptor shall pay $1,000, plus the cost of transferring the same to New York, and that the current rate of exchange on New York, at the place of payment, is 1-8%, the acceptor is bound to pay, and the holder to accept that rate.

What is the proper rate is a question of fact, to be determined as other questions of fact are; in the last resort by an action at law.

The holder of the draft can collect only the amount of the same and the exchange; he cannot make the acceptor pay anything in the nature of a collection charge. Nor does it make any difference that it has passed through a number of collecting agents. All that the acceptor is concerned in is to comply with the order contained in the draft to pay $1,000, and in addition the current local rate of exchange on New York, whatever that may be.

Sterling Bill Drawn on a Canadian Bank—Rate of Exchange.

Question 92.—The customer of a Winnipeg bank draws at London, England, a cheque on them for £1,000 sterling. What rate of exchange is the holder entitled to receive?

Answer.—If the cheque contains no stipulation as to the rate of exchange, the holder is entitled to receive payment at the current rate at Winnipeg for sight drafts. See section 70 (*d*), Bills of Exchange Act.

Special Request to Drawee of a Bill. Effect on Acceptance.

Question 93.—A bill of exchange is drawn bearing the crossing, "Accept all drafts. Any errors will be rectified at office." Is this an unconditional bill, and does the crossing affect in any way the rights of third parties?

Answer.—We do not think that the crossing affects anybody but the drawer and acceptor. It is an independent undertaking of some kind on the part of the drawer towards the acceptor, but the acceptance would be unconditional.

Bills of Exchange Act—What is Meant by "the Time of Payment."

Question 94.—A by-law of a municipal corporation authorizes borrowings from the bank repayable on or before 15th December. The note tendered is made payable on 15th December. With the three days' grace this makes the amount payable on 18th December. If we discount the note can the

loan be said to be made strictly within the terms of the by-law?

Answer.—If the by-law provides that a note shall be given for the amount borrowed thereunder, payable on or before 15th December, we think a note payable on 15th December is in order. The Bills of Exchange Act would recognize that as "the time of payment" fixed by the note, while making it "due and payable" on the 18th December.

We are in any case of opinion that the irregularity, if one can be said to exist, would not invalidate the lender's claim.

Acceptance Payable "with Exchange"—Refusal of Acceptor to Pay Exchange.

Question 95.—A draft for "$100 and exchange," with a "no protest" slip attached to it, is sent to a bank in Halifax for collection and is accepted. At maturity the acceptor refuses to pay more than $100, which the bank takes as payment on account, endorses the same on the draft, and returns it to the owner. Has the collecting bank the right to accept a payment on account, or should it return the bill unpaid?

Answer.—The course adopted was the proper one. The collecting bank may refuse to accept anything other than the full amount of the item, in this case $100, plus the current rate of exchange, but it may accept partial payment, and in such a case as this, consideration for the interests of the owner of the draft would seem to require the acceptance of the partial payment.

Acceptance Presented for Payment at Bank after Maturity.

Question 96.—Is it proper for the bank to pay a customer's acceptance after maturity, assuming that it has funds at the customer's credit, that the acceptance is in order, and that it has been made payable at the bank?

Answer.—While such a payment might generally be safely made, we think the bank has no right to pay under

such circumstances, and that it should ask the customer for instructions before doing so. The bill being overdue, his position with respect to the holder of the bill is altered, and his rights might be injured if the bank should intervene and pay.

Power of Attorney to Accept Bills, Signed by an Attorney.

Question 97.—The power of attorney sent out by banks to procure acceptance of drafts is frequently signed by an attorney of the drawee. Has he the power to instruct the bank to accept?

Answer.—Not unless the power of attorney gives him power of substitution, *i.e.*, power to appoint another attorney to act in his stead.

Bill Sent for Collection in an Indirect Manner.

Question 98.—A bank in Kingston cashed for a customer, who endorses it, a cheque payable in Sault Ste. Marie, where it has no branch. It sends it to its Toronto branch, which turns it over to a bank having a branch at that point. The cheque is dishonoured and returned through the same channel to Kingston. Can the customer of the Kingston bank claim undue delay (1) in presentment, or (2) in the notice of dishonour?

Answer.—If the cheque was sent forward promptly from Kingston to Toronto, and from Toronto to Sault Ste. Marie, and presented in due course after reaching there, the presentment was, we think, duly made within the terms of subsection 2*b* of section 45, Bills of Exchange Act (q.v.). We do not think that the customer could complain of delay only because the bank sent the cheque to Toronto instead of sending it to Sault Ste. Marie direct. The only question is whether the delay thereby caused rendered the presentment one not made within a reasonable time, but we think that, having regard to the usage of banks, such a mode of presentment is permissible.

(2) The question suggests that the return of the cheque was relied on to serve as notice of dishonour, and if so the return through the same channel, if each step is within the limit of time allowed by law, would be sufficient. If notice of dishonour had been sent to the customer by the bank at Sault Ste. Marie, delay in returning the cheque would have no effect on the customer's liability.

Collections Sent to Private Bankers

Question 99.—A current account customer brings in a note for collection, made payable at a private banker's office in a place where there is no chartered bank. He is told that the collection will only be forwarded to the private banker's at his own risk, and the following notice had been placed in his pass book when his account was opened, viz.:

All bills, notes and other securities left with the bank for collection will be collected at the risk and cost of the parties leaving them, the bank only holding itself responsible for the amount actually received by it, and not for any omission, informality or mistake occurring in collecting them.

When the note matures a partial payment is stated to have been made on the note to the private banker who fails to remit the money, and also fails financially, suspending payment the day after the payment was made.

(1) Can the customer bring suit against the bank and recover the amount paid on the note, but not remitted by the private banker?

(2) Would not the customer have a chance to recover the amount from the maker of the note? In making the note payable at this private banker's office, did he by so doing appoint him the collecting agent?

The note was returned to the customer, and of course no charge was made by the bank.

Answer.—(1) If the understanding with the customer was clearly that stated, then he must be taken to have authorized the employment of the private banker as his agent to make the collection, and must bear any loss that may result

therefrom. On proof of the conditions upon which the collection was received the customer's suit must fail.

(2) The customer has no remedy against the maker of the note. Having authorized the employment of the private banker to collect the note, anything paid the latter by the maker is in effect payment to the customer.

The fact that the note was made payable at the private banker's office is immaterial. The liability is placed upon the customer by the parole agreement, etc., at the time the note was handed in.

We might add that the law is quite clear that where a bank selects a collecting agent of its own accord, without asking the customer for instructions, or putting on him the risks involved, it is responsible for the agent's acts.

Where a customer discounts with a bank bills which can only be collected by sending them to a private banker, it might seem reasonable that, as the sending of them to such agent is a course forced upon the bank by its customer's manner of doing business, he should be responsible, but the law is clearly otherwise, and most banks, we think, now take the precaution of requiring customers who discount or lodge for collection bills payable at such points, to give a letter of indemnity on the lines suggested by the notice clipped from the pass book.

Bills of Lading.

Question 100.—If a client ships on a local railway bill 500 barrels of flour with the bill of lading reading "to the order of John Smith & Co., Demerara, S.A., notify John Smith & Co., New York," could Smith & Co. turn over the 500 barrels to a steamship company for furtherance to destination without taking up the local railway bill?

Answer.—We do not think that John Smith & Co. of New York could exercise any control over this shipment, but the railway company would, we think, without requiring the surrender of the railway receipts, be justified in delivering the goods to a steamship company, to be forwarded to their

destination, in accordance with the understanding on which they have received them. No doubt they would be [illegible] to render to act if pressed to do so by the New York house.

UNPAID BILL CHARGED TO ENDORSER'S ACCOUNT WITH NOTICE TO HIM, BUT WITHOUT PROTEST.

Question 101.—Is not a banker justified in charging an unpaid bill to the endorser's account, provided there are funds, without first protesting it, if he notifies the endorser by mail that he has done so, and would not such notice act as a notice of dishonour within the meaning of the Bills of Exchange Act?

Answer.—The bank would certainly be entitled to charge the endorser's account without protest with a dishonoured bill, provided it notifies the endorser that the bill is dishonoured. Whether or not the notice mentioned was sufficient for this purpose would depend on its terms. If the letter is so framed as to indicate that the bill has been dishonoured by non-payment this notice is sufficient. (See sec. 49, sub-sec. (*e*), Bills of Exchange Act). It is probable that a mere statement in the letter that the bill had been charged to the customer's account would be held to sufficiently indicate its dishonour.

ASSIGNMENTS OF BOOK DEBTS.

Question 102.—Would an assignment of book accounts which may be created during the year, be an effectual security, or is it necessary that the accounts should first be actually in existence and specifically assigned?

Answer.—If the assignment is properly drawn so as to cover future accounts, it will pass them as they arise. It would perhaps be well that the assignment should state the names of the prospective debtors.

ASSIGNMENT OF BOOK DEBTS.

Question 103.—Is an assignment of book debts to the bank, as the law now stands, valid as against other creditors?

Answer.—We know of nothing to prevent the bank acquiring security of this kind. If given in contravention of any statute respecting preference or insolvency it would of course be subject to attack under such statute.

Assignment of Book Debts.

Question 104.—Would an assignment of book accounts hold good as against other creditors if the debtors were not notified by the bank of the assignment?

Answer.—We do not think the notification of the debtors affects the matter one way or the other, but in the absence of notice the debtor might get a good discharge from the creditor or his assignee, and so the bank's security is affected.

Books on Banking Law.

Question 105.—What are the principal publications bearing on the law of banking in Canada, and giving legal decisions, etc?

Answer.—The only Canadian book on banking law is Maclaren's Commentary on the Bank Act (see the advertisement of The Carswell Company in the Journal). On the general subject of banking there is the English publication, "Grant's Law of Bankers and Banking Companies."

On cognate subjects Maclaren's "Bills of Exchange Act, 1890" (Canada), Chalmers' "Bills of Exchange, Notes and Cheques" (English), and "Byles on Bills," are standard publications. Any of these can be obtained through The Carswell Company. Chalmers' is an excellent book, as it discusses the clauses of the Bills of Exchange Act *seriatim*, with general matter in addition, but it has to be read with a careful eye to the two or three points where our Act differs from the English Act.

Borrowings by a Corporation beyond the Scope of its Powers.

Question 106.—Two of the officials of an incorporated body borrow money from a bank. The corporation has no

power to borrow, which fact is known to the bank. In the event of trouble can these two officers be held personally liable, there being no recourse against the corporation?

Answer.—We think not.

JOINT STOCK COMPANIES—LIMITATION OF BORROWING POWERS.

Question 107.—The amendment to the Company's Act passed by the Dominion Parliament last year says that "the limitation on the borrowing powers of the company shall not apply to or include moneys borrowed by the company on bills of exchange or promissory notes drawn," etc., etc. As a cheque is a bill of exchange within the meaning of the Bills of Exchange Act, would not a bank be justified in advancing money to a company in the form of an overdraft, provided always that they had the account covered before surrendering the cheque?

Answer.—We do not think that the Amendment to the Company's Act respecting the limitations of the borrowing powers of joint stock companies would cover an overdraft, that is not borrowing on a bill of exchange, in the sense referred to in the Act. Although an overdraft is created by the company drawing cheques (which are bills of exchange) upon the bank, they cannot be said to be borrowing on these cheques because when a cheque for which there are no funds is paid the amount thereof becomes a direct loan to the company, and the cheque plays no further part in it.

BRANCHES OF BANKS—INTEREST TO BE PAID SAME WHEN SELF-SUPPORTING.

Question 108.—A branch with considerable discount business has a much larger amount of deposits bearing interest. At the end of the year, therefore, the statements appear to show no profits. The surplus funds having been used by the bank generally, what would, in the present conditions of business, be a reasonable rate to allow the branch for them? Do any banks allow anything to such branches, and if not, how is their profitableness arrived at?

Answer.—We do not know whether any banks make actual entries for interest on capital supplied by branches, but we assume that the profitableness or otherwise of the branch is tested by computations in which full allowance is made for this.

At any rate, we think this should not be less than 4 per cent. nor more than 5 per cent., but the proper figure is a matter as to which opinions may well vary.

Canadian Bankers' Association Clearing House.

Question 109.—Should not the word "or" on sixth line of Clearing House Rule No. 14 be "on"?

Will you kindly give an illustration of the working of Rule 14. The first sentence contains 150 words, and its meaning is not as clear as it might be.

Answer.—(1) The word should be "on."

(2) The rule referred to deals with exceedingly complicated conditions, but its meaning is clear, and we doubt if it could be simplified very much. It is intended to cover a case where for any reason the banks which have balances against a defaulting bank prefer not to have their items returned, but to get the benefit of the balances due the defaulting bank by other banks, a right which under some circumstances might be very important. The phraseology is affected by the fact that the defaulting bank does not owe, or stand as a creditor of, the several banks in the Clearing House, but owes its debtor balance to the chairman of the Clearing House (Rule 11, clause 3). This is necessary in order that some person or body should have a legal claim.

Grand Trunk Railway and Canadian Pacific Railway Pay Cheques.

Question 110.—Are the vouchers issued by the Grand Trunk and Canadian Pacific Railway companies, cheques? An article in the English "Bankers' Magazine" for April calls attention to a judgment declaring that even cheques

on a bank requiring the receipt of the payee to be attached, do not come under the Bills of Exchange Act.

Answer.—A cheque must be an unconditional order to pay and must be addressed to a bank. We are inclined to think each of the documents referred to would be held to be addressed to a bank. There does not appear to be anything in the case of the Grand Trunk order which can be said to make it conditional. No receipt seems to be required before payment is to be made. The better opinion would seem to be that this document is a cheque.

The Canadian Pacific order requires, in case of payment by an agent, that it be first "properly endorsed," and the form of receipt being upon the back of the order, a "proper endorsement" would possibly be held to be a signature of the receipt, and nothing less. But there is nothing in the body of the order—that portion of the document which directs the Bank of Montreal to pay to the order of the payee—expressly making the signing of the receipt a condition without fulfilment of which the bank is not to pay, and we do not find anything which satisfies us that in the case of the bank, such a condition is implied.

Cheque Certified by a Bank "Good for Two Days only."

Question 111.—Can a bank refuse payment of a cheque which it has marked "good for two days only" if presented after expiration of the two days?

Answer.—We think that after the two days have expired the cheque must be regarded as if it had not been marked by the bank, and if there are then no funds its refusal would seem to be in order.

Cheque Certified "Good for Two Days only."

Editing Committee Journal of the Canadian Bankers' Association, Toronto:

Dear Sirs.—The reply given in the Journal for July, 1899, to question No. 111, is so entirely at variance with that which has, I believe, hitherto been the accepted view of the

matter, that I may perhaps be pardoned for drawing your attention to it. Writing from memory, I think I am correct in stating that this question arose some years ago in a very important way, when the tenders for the construction of the Canadian Pacific Railway were under consideration by the Government at Ottawa. The Minister of Railways, Sir Charles Tupper, I think, refused to accept the deposit made by one of the tenderers on the ground that the cheque had been marked good by the Bank of Montreal, Ottawa, with a time limit attached. As soon as the question arose it was at once referred, we were told at the time, to the authorities of that bank at head office, and the reply was made that the cheque would be considered good until paid, in spite of any limit attached to the acceptance.

This answer was in accord with the view held by bankers generally when the dispute arose, and I remember it was the cause of a good deal of angry discussion in the press at the time.

If the cheque is charged to a customer's account at the same time that it is marked good with this qualification, how is the acceptance to be cancelled? Is the time limit really of any effect legally, because I have been instructed that it has none?

I submit these remarks with the utmost deference and only for the purpose of making the matter still more clear.

Yours truly,

E. D. ARNAUD.

Annapolis, N.S., 21st Aug., '99.

We think that the answer we have given is correct. The fact that the bank in the case cited had declared that the cheque would be considered good until paid does not affect the question. It merely meant that they were willing to go beyond the contract entered into on the cheque, and in that particular instance it was done because the drawer of the cheque particularly wished it to be held good, and the limitation in the acceptance was an error on the part of the officer who marked the cheque.

On the general question we think that when a cheque is marked with a time limit the bank might regard itself as free from liability thereon, and reverse the debit to the customer's account after the expiry of the time, although in practice it is quite unlikely that either the customer or the bank would wish to do this. If, however, the customer were to say to the bank under such circumstances: "You are no "longer liable on the cheque which you marked a week ago "and charged to my account. I wish you to reverse this "entry and to pay other cheques which I have drawn," we think it very doubtful indeed whether the bank would not be liable for damages if it should refuse to honour cheques to the extent of the balance which the customer's account would show after reversing the entry for the marked cheque.

The "moral" of the whole matter seems to be that banks should not accept cheques except in the absolute form. —Ed. Com.

Cheque Marked "Good for Two Days only."

Question 112.—A correspondent writes:

In your issue of July, 1899, you have answered the question No. 111, which is: Can a bank refuse payment of a cheque which it has marked "good for two days only," if presented after the expiration of the two days? "We think that after the two days have expired, the cheque must be regarded as though it had not been marked by the bank, and if there are then no funds, its refusal would seem to be in order."

Will you allow me to express the opinion that this answer does not appear clear to me, as in accepting the cheque and stamping it "good for two days only," the account of the maker of the cheque has been debited and the amount deducted from the balance. Should I understand that you mean that the debit entry be cancelled and the amount of the debit recredited if the cheque is not presented for payment within two days of its acceptance by the bank?

Besides, on general principles, I am of opinion that the acceptance of a cheque by a bank renders it liable to the same

extent as its acceptance of a bill of exchange drawn upon it by a foreign customer, and its responsibility cannot be affected by limitation.

I have always been under the impression that the stamping of cheques "good for two days only" was only to prevent accepted cheques from remaining outstanding.

What protection would there be to payees of cheques residing in a different place than where the cheques are payable, if the acceptance of a bank can be declared void on account of unavoidable delay in presentation?

Answer.—This subject was more fully discussed in the number of the Journal for October, 1899, and we would refer you to what was there said. Our answer to Question 111 is based on the theory that at any time after the expiration of the two days the bank's liability on the cheque ceases, and that the drawer therefore has a right to request the bank to cancel the entry in his account.

No doubt the acceptance of a cheque in proper form by the bank makes it liable to the same extent as the acceptor is liable on any ordinary bill of exchange. The point is that an acceptance "good for two days only" is not properly speaking an acceptance at all, but only a special kind of engagement, limited by its terms. We see no hardship in this view of the case, for of course no person is bound to take the cheque. If one chooses to do so he knows that if not presented within the time limit payment is not necessarily guaranteed by the bank.

The rights of holders of cheques which are accepted in the proper way differ materially from those of holders of cheques accepted conditionally on their being presented within two days.

Rights of a Bank to Refuse to Certify or Accept Cheques.

Question 113.—Has a bank a right to refuse to certify a cheque presented by the drawer, and payable to his own order, because it is not endorsed?

Answer.—We do not think that the ordinary contract between a bank and its customer obliges it to accept or certify cheques. We think that all it is bound to do is to pay the cheques on presentation if there are funds. The most that could be said would be that the bank should not refuse to certify cheques issued by its customer, when there had been a long established practice on its part of doing so, without reasonable notice. We think, however, that when a cheque is presented by the customer himself, no question of this kind could arise.

CERTIFICATION OF A CHEQUE BY THE DRAWEE BANK—RIGHT OF THE BANK TO CANCEL ITS ACCEPTANCE AFTER DELIVERY.

Question 114.—A cheque which has been dishonoured is handed by a bank to a solicitor for collection. On presenting it at the bank on which it is drawn, he is informed that the party has just made a deposit, and payment is offered. He has the cheque marked good, however, and takes it to his own bank, who declines to receive it because it still appears to be the property of the bank for whom he is acting. He returns to the drawee bank and asks them to pay it, whereupon they cancel the acceptance and inform him that it was given under a mistake; that although the party made a deposit it was to cover a previous overdraft, and there were still no funds. Had the bank a right to cancel the acceptance?

Answer.—The question is asked with reference to a cheque drawn on an American bank. In the United States it seems to be admitted that under such circumstances the bank would have a right to cancel the certification of the cheque. See "Daniel on Negotiable Instruments," 4th edition. The passage is too long to quote, but is to the effect that the certification of a cheque may be revoked provided no change of circumstances has occurred which would render it inequitable for such a right to be exercised.

The point seems never to have come up in a Canadian court, and here it may be urged against this view, that an acceptance completed by delivery is irrevocable, and that the

ordinary mode in Canada of marking a cheque good is in effect an acceptance. It is not clear, however, that the same results would not follow here as in the United States.

Certified Cheque—Would the Drawee Bank be Justified in Refusing Payment on the Drawer's Instructions?

Question 115.—Would a bank be justified in refusing to pay a certified cheque if instructions had been received from the drawer to stop payment?

Answer.—The bank by certifying or accepting a cheque has come into privity with the payee, and the drawer's right to countermand payment is at an end.

Crossed Cheques.

Question 116.—Would a Canadian teller be justified in paying a cheque with two lines across the face? I take it that if a cheque were crossed to, say the Bank of Montreal, it would have to go to the credit of the payee's account in that bank—that is, it would have to be deposited to the man's credit, and the teller could not legally pay out the cash for it.

Answer.—A teller would not be justified in paying cash over the counter for a crossed cheque, whether the crossing be special or general—that is, with two lines only, or with the name of a bank in addition to the lines. A crossed cheque should only be received for credit of the account of a customer—not necessarily the payee—at the bank to which it is crossed, or, if crossed generally, at a bank. Of course a bank may cash any crossed cheque, under any circumstances, but at its own risk. If the right party receives the money, that ends the matter; if not, the bank might not have the protection afforded by clause 79 or 81 for payments made in the regular course.

Changes of Bank Officials.

Question 117.—Is it customary with Canadian banks, in case of a change of manager or accountant of an office, for

the retiring manager or other constituted authority to inform the other banks in the same city?

Answer.—Notice of a change of the manager or accountant of a branch is not usually given by Canadian banks, except to their own branches, agents and correspondents.

Chattel Mortgage on Growing Crops where Land Mortgaged to another Party.

Question 118.—Jones's farm is mortgaged to a loan company, and his growing crops are covered by a chattel mortgage to a private banker. The loan company take proceedings to sell the farm. Will the chattel mortgage hold good against them or can the company take the crop without paying the private banker?

Answer.—The law on this subject is clearly settled in Ontario by the case of Bloomfield v. Hellyer, reported in Appeal Reports, vol. 22, p. 232, the head note of which is as follows:

"A mortgagor after default is, as far as crops growing "upon the mortgaged land are concerned, in the position of "a tenant at sufferance, and cannot by giving a chattel "mortgage upon the crops confer a title thereto, upon the "chattel mortgagee to the prejudice of the mortgagee of the "land, or any one claiming under him, who has entered into "possession of the land before the crop is harvested."

The result of this decision is that the mortgagor can by chattel mortgage grant to the chattel mortgagee only such interest in the growing crops as he himself has, and, as this interest is subject to the right of the mortgagee of the land to enter, upon default, and take possession of the land, including the crops, the chattel mortgagee would have no claim against the mortgagee of the land, because he took possession and removed the crops.

Alteration of a Cheque after Certification by the Bank.

Question 119.—A draws a cheque payable to B for $1,000; gets it certified by his bank, and sends it by post to

B. B finds he does not need it and returns it to A, but omits to endorse it. A changes "order" to "bearer" and initials the alteration; then presents it to the bank for payment. The bank, however, refuses to pay the cheque, and allows it to be protested on the ground that the cheque has been altered since it was marked. Is the bank right?

Answer.—We think the bank is technically right, as the alteration of the cheque without the bank's consent, avoided it, and the bank could strictly decline to cash it. Substantially, however, the drawer would not lose the thousand dollars. It would work out in this way: The drawer of a cheque may at any time before payment countermand the cheque, and as between the bank and the drawer, the bank must upon the countermand decline to pay and still hold the money for the drawer. If, however, the payee gets the cheque marked at the bank, then the drawer cannot countermand; but should the payee not get immediate payment, and should the bank subsequently fail or refuse to honour the cheque, the drawer would not be liable upon it to the payee. But we think that where the drawer himself gets the cheque certified he can still countermand it before he has parted with it; in other words before the bank has become liable to anyone but himself upon it. If, therefore, in the case put, the drawer before sending the cheque to B had changed his mind and cancelled the cheque and handed it back to the bank, the bank would have had to reverse the entry and credit his account again with the amount. The payee having returned the cheque to the drawer, and it being lawfully and beneficially in his possession, we think he would have the same right to cancel it and countermand its payment.

Had he done so the bank would have been bound to restore the amount to the credit of his account, and he then might have drawn a new cheque and got it cashed. He clearly had no right without the assent of the bank to alter the existing cheque, and ask to have it cashed.

Cheque with the Amount Expressed in Figures only.

Question 120.—The amount of a cheque is expressed in figures only, both in the body of the cheque and in the mar-

gin. Has the bank a right to refuse payment of a cheque so drawn, for which there are funds?

Answer.—We cannot find that the courts have ever considered the case of a cheque drawn as above described, but the bank's rights on the point mentioned do not depend on the law, so much as on the agreement between it and its customer, which agreement is chiefly to be implied from the course of business and the custom of banks.

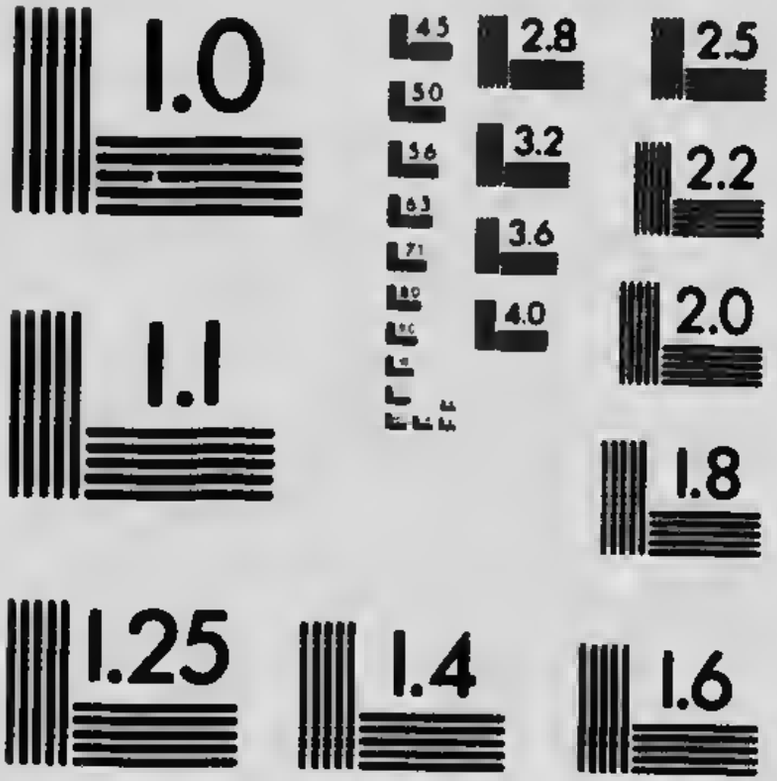
The courts would probably hold that such a cheque was a valid instrument, and they might further hold that the bank was bound to honour it. We think, however, that by virtue of the custom requiring customers to express the amount of cheques in words, the contract of the bank to pay is conditional on the cheque being drawn in the usual way, and that it would be under no responsibility if it should decline to pay until the cheque was amended, especially if the reason for the refusal, and the fact that funds were held to meet the cheque when properly filled up, were explained to the party presenting the cheque. It could scarcely be said that a refusal for such a reason would work any injury to the customer's credit.

CHEQUE DRAWN BY A FIRM TO THE ORDER OF ONE OF THE PARTNERS, CASHED BY ANOTHER BANK AND LOST IN THE MAILS—FAILURE TO NOTIFY ENDORSER OF DISHONOUR.

Question 121.—1. A post-dated cheque drawn by a firm on an American bank in favour of one of the two partners in the firm, was cashed by a Canadian bank for the payee, who endorsed it, and it was lost in the mail. The Canadian bank applied to the other partner, who was winding up the partnership business, for a duplicate, and also notified the endorser of the loss, receiving the latter's assurance that a duplicate would be issued. This has not been done, although two months have elapsed. Has the bank any recourse against the endorser as such, or against him as one of the drawers? The other partner is now insolvent.

MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



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(2) Would proof that there were no funds for the cheque affect the endorser's liability?

Answer.—(1) The payee, as endorser, is probably discharged from liability by want of notice of dishonour, although his promise to procure a duplicate might be held to excuse the notice. It is not excused by the loss of the cheque.

He is, we think, liable as one of the drawers. The delay in presentment would not discharge the drawers unless they suffered actual damage through the delay.

The Canadian bank should present a copy of the cheque for payment and give the drawers notice of dishonour; they can then proceed in the ordinary way.

(2) It would not follow that the cheque would be refused because there were no friends at credit. If it could be affirmatively established that the endorser knew there were no funds, and no arrangement for an overdraft, notice to him of dishonour would probably be unnecessary.

CHEQUE CASHED BY A BRANCH OF A BANK OTHER THAN THE BRANCH ON WHICH IT WAS DRAWN—SENT FOR COLLECTION AND LOST IN MAILS.

Question 122.—A cheque on a bank in Hamilton in favour of A was cashed for him by a bank in Toronto. It was forwarded by mail in due course for presentment, but the letter has not reached its destination, and the drawer has since failed. What are the bank's rights against the drawer of the cheque and against A?

Answer.—Under clause 46 of the Bills of Exchange Act, "delay in making presentment for payment is excused when "the delay is caused by circumstances beyond the control "of the holder." Delay through loss in the mails is, we think, such as comes within this definition. The bank's rights against the drawer and endorser of the above cheque are therefore just such as they would be against similar parties to a bill which is not due, and they continue liable thereon until the cause of delay ceases to operate.

The bank's remedy in the case is provided by sections 68 and 69 of the Act. It has a right to demand a duplicate cheque from the drawer on giving suitable indemnity, and if this is then duly presented, and, if dishonoured, notice given, suit can be brought against the drawer and endorser.

CERTIFIED CHEQUE PAYABLE TO THE DRAWER'S ORDER—SUBSEQUENT GARNISHMENT OF FUNDS AT CREDIT OF ACCOUNT.

Question 123.—A customer of a bank draws a cheque on it in his own favour for the full amount of his balance and has it accepted. The following day proceedings equivalent to garnishment are taken by his creditors, and any balance due him by the bank would have passed from his control.

On the day following this, the customer presents the cheque for payment. Should the bank pay him the money, any sums due by it having been legally attached?

If the cheque were presented by a third party, what would be the position of the bank?

Answer.—We think that the attachment would prevent the bank paying the amount of the cheque to the customer under the circumstances mentioned.

Its right to pay a third party would depend on the nature of the so-called "acceptance." If it were such as would be held an "acceptance" under the Bills of Exchange Act, the rights of the third party would of course prevail.

CERTIFIED CHEQUE — RESPONSIBILITY WHEN BANK FAILS BEFORE PAYMENT OF.

Question 124.—A cheque on bank "B" is deposited with bank "A" by Jones & Company, who endorse it. Does bank "A" release Jones & Company when it gets the cheque certified by bank "B"? If so, does it not leave bank "A" without redress, for if, instead of certification it had asked for cash, bank "B" would no doubt have said, "Send it in with your deposit to-morrow."

This of course refers to such circumstances as those mentioned, where bank "B" suspends immediately after certification.

Answer.—Bank "A" can protect itself fully by demanding payment, and if this is not forthcoming, by treating the cheque as dishonoured. If, because of its unwillingness to take so extreme a step, it chooses to be put off by bank "B" in the way mentioned above, and the latter suspends, "A" must take the consequences of its complaisance.

If there be doubt as to the solvency of the bank, the only safe course is either to demand payment or presentation or not to present the cheque at all in the afternoon, but send it in the ordinary exchanges next morning. If then dishonoured, the holder can charge it back to the depositing customer, as the presentation in such case would be made in due course.

Cheque Crossed by Payee Bank Payable at Par at a branch of another Bank.

Question 125.—A customer of a bank at St. Hyacinthe which has not a branch in Montreal, presents his cheque on the St. Hyacinthe Bank, which the latter at his request stamps "payable at par at the Merchants Bank of Canada, Montreal," adding thereto the initials of one of its officers. Would the St. Hyacinthe bank be bound to honour the cheque if presented either by the Merchants Bank of Canada or the party to whom the cheque was sent?

Answer.—It would seem clear to us that if the Merchants Bank should cash the draft on such a crossing they would be entitled to look to the St. Hyacinthe bank for its payment, not on the ground that the cheque was accepted or marked good, but on the ground that the drawee bank had requested them to pay the cheque on its behalf. The stamp and initials, we think, constitute such a request.

The position of the party to whom the cheque was sent is somewhat difficult, and we should hesitate to say without further consideration that the St. Hyacinthe bank would be

bound to pay the cheque to him, although it would seem reasonable to have the bank responsible to this extent in view of what they had placed upon the cheque.

Cheque Dated January, 1899, Offered for Deposit in January, 1900.

Question 126.—A customer wishes to deposit with his bank, on 5th January, 1900, a cheque drawn on another bank dated 5th January, 1899. Is the bank justified in refusing to take it on deposit only because it is dated a year back.

Answer.—We think the bank should not refuse the cheque only for the reason stated. We cannot see what risk the bank would run in taking such a cheque on deposit, although of course the bank may take or refuse to take on deposit whatever items it chooses. The most that could be said is that the cheque might be held to be overdue under section 36, sub-section 3. That would not, however, lessen the responsibility of the customer to the bank if it should be dishonoured.

Defacing a Dishonoured Cheque.

Question 127.—A cheque has been dishonoured, and is charged back to the account of the customer from whom it was received. When charging it back the ledger-keeper marks the cheque with the folio and his initials. The cheque is subsequently honoured by the bank on which it is drawn, but some difficulty is created by the figures and initials already placed on it. Do you not think the action of the ledger-keeper in question open to criticism?

Answer.—The action was certainly open to criticism. We do not think it is a good practice to treat a dishonoured cheque or bill as the entry voucher in debiting it back to the customer, as the item is thereby liable to be cancelled or mutilated.

DISHONOURED CHEQUE—WHEN MAY SAME BE PROTESTED.

Question 128.—Can a dishonoured cheque be protested before the regular bank closing hour?

Answer.—Neither a cheque nor any other bill of exchange can be protested before three o'clock (see section 51, 6B). This, however, has nothing to do with the time for presentation. If the cheque were dishonoured at ten o'clock in the morning, it could then be handed to the notary, and he could, without further presentation, complete the protest at three o'clock.

CHEQUE—DELAY IN PRESENTMENT FOR PAYMENT. RECOURSE AGAINST THE DRAWER.

Question 129.—A gets B to give him his cheque on bank Y for $500. He asks bank Z in the same town to cash it and hold it for a week without presenting, at the end of which, he, A, will take it up. If he fails to do so and the cheque is refused, would bank Z have a valid claim on B (a) if the cheque were dishonoured for want of funds, (b) if B had countermanded payment?

Is B responsible to a holder for value, until discharged by the Statute of Limitations, notwithstanding any delay in presentation which does not cause him actual damage?

Answer.—We think the drawer of the cheque is liable notwithstanding the non-presentation of the cheque for payment, until relieved by the Statute of Limitations; unless he suffers actual damage through delay.

CHEQUE DISHONOURED AND PAID AFTER SOME DAYS' DELAY —HOLDER'S RIGHT TO INTEREST.

Question 130.—A cheque dishonoured on 9th April is to be paid on 15th May. Has the holder a legal claim on the drawer for interest?

Answer.—A cheque is a bill of exchange payable on demand. The cheque was presented and dishonoured on April 9th. The holder may recover from the drawer the

amount of the cheque and interest from time of presentment for payment. (Bills of Exchange Act, secs. 72 and 57).

Cheque Drawn on an Altered Form.

Question 131.—The name of the bank printed on a cheque was ruled out, and that of the one at which the drawer kept his account written in. Would this under any circumstances be a material alteration?

Answer.—Any change made in a cheque before the drawer signed it is not an "alteration" in any sense. If the change were made after the cheque was issued, it would, of course, invalidate the cheque, and the question sometimes arises as to the propriety of paying a cheque drawn on an altered form where the alteration is not initialed by the drawer. Ordinarily, no doubt, the surrounding circumstances justify the payment of such a cheque.

Cheque Drawn "Payment in Full of Account"—Right of Drawee Bank to Refuse to Pay.

Question 132.—Has a bank any legal right to refuse payment of a cheque—or is there any custom to warrant their doing so, there being funds for the same—on which is interlined "Payment in full of account," or any similar wording?

Answer.—We do not think a bank has any right to refuse a cheque merely because it contains a statement of the purpose for which it is given. So long as it is an unconditional order on the bank to pay the money, they are bound by their customer's instructions.

Cheque Endorsed by Payee — Refusal of Party Presenting to Endorse.

Question 133.—A presents at the drawee bank a cheque payable to the order of B and endorsed generally by the latter, which he himself declines to endorse. Can the bank refuse payment until he does?

Answer.—The bank has probably no right to demand A's endorsement, but it has the same right to withhold pay-

ment until it is satisfied that the endorsement of B is in order that it would have if B, being a stranger, presented the cheques in person.

Cheque Endorsed by Presenting Bank, "Deposit to Credit of ——" (Payee).

Question 134.—Is a bank justified in refusing payment of a cheque which is not endorsed by the payee, but has been endorsed by the payee's bank as follows—

"Deposited to credit of (payee), A. B., Manager," such an endorsement being guaranteed by the depositing bank?

Answer.—This is not A. B.'s endorsement, and the practice is open to objections, but an item would usually be paid on such an endorsement and guarantee. The drawee bank would, however, be quite justified in refusing it.

Bill for Collection Recalled after being Marked Good.

Question 135.—A bill is presented by a collecting bank on the morning of the day it falls due, and is duly "marked good" by the bank at which it is accepted payable. Later in the day the collecting bank receives a telegram from their correspondent to return the bill. What is the proper course for the collecting bank to [illegible] view of the fact that the bill has already been mark

Answer.—The bank's [illegible]ch a case clearly is to advise its correspondent of [illegible]ceptan[illegible] of the bill by the bank at which it is payable, and to ask further instruction. It should not permit the cancellation of the "marking" in any event.

Forged Cheque Cashed by the Drawee Bank.

Question 136.—A cheque endorsed by the payee to a third party is presented by the latter to the bank on which it was drawn and duly honoured. It subsequently transpires that the drawer's name has been forged by the payee.

Would the bank have any recourse against the endorsee who was ignorant of the forgery when he obtained payment from the bank?

Answer.—The law is quite clear that a bank is bound to know the signature of its own customer, and that it pays a forged cheque at its own peril. In the case stated, the bank would have no recourse whatever against the innocent party to whom it paid the money. The position of the bank is analogous to that of the acceptor of a bill, who by section 54 of the Bills of Exchange Act, is precluded from denying the genuineness of the drawer's signature.

FORGED CHEQUE PAID THROUGH THE CLEARING HOUSE—RIGHT OF PAYING BANK TO RECOVER.

Question 137.—If a bank pays a cheque drawn on itself through the Clearing House, and some days afterwards discovers signature is a forgery, can it recover amount from the bank to which it was paid?

Answer.—No. The drawee who accepts a bill is precluded from denying the genuineness of the drawer's signature, so that if a cheque were accepted by the bank it could not (under ordinary circumstances) object afterwards to the holder that the drawer's signature was forged. Bills of Exchange Act, section 54, sub-section 2.

When a cheque or bill is paid the same rule applies as regards the party to whom the money was paid.

PAYMENT OF FORGED CHEQUE TO INNOCENT HOLDER.

Question 138.—A customer of a bank deposits an unmarked cheque drawn on another bank for credit of his account. This cheque is sent into the bank it is drawn on, through the Clearing House (unmarked) and is then accepted and paid. A month later, the paying bank discovers the cheque was forged, and calls on the bank, from whom they received it, to refund them the money. As acceptors, are they not precluded from denying the genuineness of the cheque?

Answer.—The law is quite clear that a bank is bound to know the signature of its own customer, and that it pays a forged cheque at its own peril. In the case stated, the bank would have no recourse whatever against the innocent party to whom it paid the money. The position of the bank is analogous to that of the acceptor of a bill, who, by section 54 of the Bills of Exchange Act, is precluded from denying the genuineness of the drawer's signature.

Refusal of Bank to Pay Customer's Cheque for Which there are Funds.

Question 139.—May the teller of a bank refuse to cash a cheque which is correct in every particular and for which there are funds? The case in mind is one where the teller had accidentally become aware that it was the drawer's intention to order the bank not to pay, but the teller knew of no reason why the drawer should stop payment, and no such notice had been received by the bank when cheque was presented.

Answer.—As the customer who drew the cheque is the only person who would have any right to complain of its refusal, and as the teller's action was in accordance with his wishes, although not formally notified, the refusal was in order. We think the teller took the risk of the drawer changing his mind, and of making the bank liable for having refused a cheque for which there were funds.

Not Sufficient Funds.

Question 140.—A has a cheque of $80, signed by B, on our savings department, but B has only $40 to his credit; is the bank justified to pay to A the balance remaining to B's account without any notice? What would you think of a debit slip on B's account to withdraw the balance remaining to his credit, and apply that amount as a partial payment on the back of the cheque?

Answer.—The bank should refuse payment—"Not sufficient funds."

Insufficient Funds for a Cheque.

Question 141.—Would you think it well to amend the law so as to give to the holder of a cheque for which there are sufficient funds, a right to receive whatever amount there may be at credit of account?

Answer.—We think that it is now permissible for a bank to accept a cheque for part of its amount, and of course, subsequently to pay the partial amount, but it is not obligatory, and we think that as a practice it could be open to objection. As far as the interests of the banks are concerned we think that any legislation giving the holder of an unaccepted cheque rights against the bank would be highly undesirable. At present banks are responsible only to their own customers for what they do, or omit to do, in respect to any unaccepted cheque, and to alter this position would involve serious consequences.

Rights of the Holder of a Cheque against the Drawee Bank.

Question 142.—In your reply to Question 141, you say that the acceptance by the banks of the cheques for part of their amount would as a practice be open to objection. Would you kindly state the principal objections?

(2) You also imply that to give the holder a right to demand payment of part of the cheque when there were insufficient funds for the whole "would involve serious consequences." In "Girouard's Bills of Exchange Act, 18[illegible]," p. 260, the case of Gore Bank v. Royal Canadian Bank, 13 ch. 425, is quoted: "If a bank refuse to pay a cheque, having sufficient funds of the drawer for the purpose, the holder can compel payment in equity." If this rule holds good it might be in the interest of all to extend it to a case [illegible] sufficient funds."

Answer.—(1) The chief objection is the trouble and [illegible] of error involved, for which the trifling profit derived from the class of accounts where such things might happen would never pay.

(2) The remark cited is contrary to the well-recognized rule, that until a cheque has been accepted the holder is not in privity with the bank, and no one can proceed against it in connection with the cheque except the drawer. It had nothing to do with the merits of the case, but was a mere passing remark.

As to the consequences of a change in the law, the following among other considerations may be mentioned:

If the holder had a right to demand payment it would involve a duty on the part of the bank to pay on his demand if it held funds, and a consequent responsibility to him for any error in refusing payment. At present, whether the bank pays a cheque or refuses it, if it refuses one cheque and immediately afterwards pays another, if it overlooks a credit, or charges the customer with a wrong debit, the matter is one which affects only the bank and the customer, and a reasonable and friendly settlement of any mistake is in practically every case assured. It needs little imagination to forecast the difficulties that would arise if the bank had to reckon with a holder who was (or thought he was) unjustly treated. To give such a right to holders of cheques for which there are insufficient funds is open to other practical objections, such as the labour and risk of error it would involve, and the endless disputes which might be expected to result.

Cheque—Guarantee of Endorsement.

Question 143.—A cheque payable to "Samuel Smith or order" is endorsed:

"Pay to the order of Bank.....
"Deposited to credit of.....
"Samuel Smith."

Can the bank on which it is drawn legally refuse payment unless the endorsement is guaranteed by the depositing bank?

Answer.—This is in our opinion a restrictive endorsement under section 35, Bills of Exchange Act, but so far as

any dealing with the item is governed by the "Rules respecting Endorsements" a guarantee is unnecessary. Under section 7 of the Rules the deposit by the collecting bank makes the latter a guarantor of the endorsement.

The legal rights of the parties are, however, not touched by these Rules. Under sub-section 3 of section 35, Bills of Exchange Act, the endorsee in this case would appear to have a right to receive payment of the bill, and to sue any party whom his endorser could have sued. We are therefore of opinion that the drawee bank cannot legally refuse payment.

CHEQUE BEARING THE WORDS "IN FULL OF ACCOUNT."

Question 144.—A cheque payable to order contains the words "in full of account to date." If the cheque is used does this discharge the liability of the drawer to the payee of the cheque?

Answer.—If the payee notifies the drawer that he is not satisfied to accept the cheque in full of his claim, but only as a payment on account, the phrase quoted would not affect the rights of the parties. If he receives the cheque without giving such notice, it would probably be held that he had settled the debt due by the drawer, for the amount of the cheque, and released him from any further claim.

CHEQUE LOST IN MAIL—RIGHTS AGAINST CUSTOMER FROM WHOM RECEIVED AND AGAINST ENDORSER.

Question 145.—A customer deposits a cheque drawn on an out-of-town point, which is duly credited to him, and sent by mail for collection. It is lost in the mails, and drawer refuses to give duplicate unless the bank indemnify him.

(1) Is the bank not entitled at once to charge the amount of the lost cheque against the customer's account?

(2) Is the bank under any obligation to give the required bond of indemnity?

(3) Should not the customer give the bond?

(4) If the cheque had been payable to another party, who endorsed it to the customer, how can he be made responsible to the bank?

Answer.—The bank cannot charge the customer's account with the lost cheque unless it has an understanding with him that although it has credited the amount to him (i.e., has cashed or negotiated the cheque) it was acting as his agent in collecting it. In the absence of a special contract the bank had only the remedy which it would have against any endorser; it must procure a duplicate from the drawer, present it, and if dishonoured give the customer due notice. Possibly, if a "copy" is presented under section 51 (8) of the Bills of Exchange Act, and the drawee bank replies, "no funds," and the cheque is protested, the bank would have an immediate right of action against the endorser, and could charge the amount to his account.

(2) The bank, as holder, is the only party who can obtain a duplicate and must give the security. (Section 68).

(3) The customer is not concerned until the bank has established its right to charge him, as above described.

(4) An endorser on a lost cheque who comes between the drawer and the customer may be made to endorse a duplicate (on suitable indemnity being given), or he may be sued, and under section 69, cannot set up the loss of the cheque, if indemnified.

Lost Cheque. Right of Drawer to Indemnity on Issue of Duplicate.

Question 146.—A cheque is lost in transmission between a bank in Montreal and one in Toronto. The drawer refuses to give a duplicate unless the bank in Montreal gives a bond of indemnity. Is the latter obliged to do this? Would not the drawer be relieved of liability by stopping payment of the cheque?

If the cheque had been certified by the bank on which it is drawn, what would be the right procedure?

Answer—Under section 68, Bills of Exchange Act, the drawer on giving a duplicate is entitled to suitable indemnity, and the Bank in Montreal must furnish it to his satisfaction, or, if they cannot agree, to the satisfaction of the court. The stopping of such payment does not relieve the drawer from liability, inasmuch as the cheque might be negotiated and in the hands of third parties, who would, if the cheque were dishonoured, have a valid claim on the drawer.

If the lost cheque has been certified, the rights of the bank on which it has been drawn have to be considered. Its strict rights depend on the nature of the certification. If this amounts to an acceptance it is entitled to be fully indemnified, and in any case the practical course is to include both the drawer and the bank in the indemnity furnished.

Rights of Parties to a Lost Cheque, the Drawer being Dead.

Question 147.—A cheque on a distant point is cashed for a customer, and is subsequently lost in the mails. The drawer of the cheque dies and the legal representatives refuse to give a duplicate cheque. There were funds to pay the cheque when drawn. What is the position of the parties?

Answer.—The matter may be regarded in this way: the delay in presenting the lost cheque has not discharged the drawer or endorser (see sections 46 and 50, Bills of Exchange Act), but the death of the drawer has countermanded the order to pay, and the drawee bank could therefore not pay the cheque if it should now be presented. Section 68, respecting the right to demand a bill of the same tenor, would not apply, as the cheque of the executors would not be the same thing as the cheque of the drawer himself, for if the estate were not solvent the giving of such a cheque would create a preference. This they cannot properly do, and besides if the bank did not pay it the executors would be personally responsible—a liability they are not obliged to undertake.

It is quite clear that the rights of the parties still subsist notwithstanding the disappearance of the cheque, and we think that the holder could make a claim upon the estate for the amount of the cheque. On proof of the facts, and on suitable indemnity being given, such a claim should succeed, under section 69 of the Act.

Cheque Made Payable at a Future Date.

Question 148.—A cheque dated 15th December, 1901, has written across its face "payable 15th January, 1903." Does such a condition invalidate the cheque? If not, would the bank be justified in paying it before the 1st January, 1903?

Answer.—The crossing does not invalidate the instrument, but it is not a cheque; it is a Bill of Exchange payable on 15th January with three days' grace, and the bank could not properly pay it before maturity.

Cheque Crossed "Duplicate."

Question 149.—A cheque is issued, having written across it the word "duplicate." If the bank should pay this what would be its duty as regards the original? Is the drawer liable on the original?

Answer.—While the mere issue of a duplicate cheque may or may not, according to the circumstances, be regarded as an order to the bank to stop payment of the original, it would certainly protect the bank from any liability to its customer if it should refuse payment of the original. A duplicate is, however, seldom used without notice being given stopping payment of the original. The drawer would undoubtedly be liable on the original to a holder in due course, hence a duplicate should not be issued without proper indemnity.

Marked Cheques—Manager's Initials not Equivalent to an Acceptance.

Question 150.—Is the presence of the manager's initials on a cheque a sufficient guarantee of its being marked good or accepted?

Answer.—If the question has reference to the common practice of the manager putting his initials on the margin of the cheque as authority to the ledger-keeper to mark it, we would not regard that as constituting an acceptance on the part of the bank.

MARKED CHEQUE OUTSTANDING TEN YEARS. CHEQUE NEVER ENTERED. NO FUNDS HELD.

Question 151.—The manager of a bank marks a customer's cheque "good," but omits to charge it to his account. The cheque is given to a third party as security in connection with a contract, who holds it for over ten years. In the meantime the customer fails, the manager dies, and when the cheque is presented there is no record of it in the bank's books, and no money to the credit of the customer's account. Under these circumstances is the bank obliged to pay the cheque?

Answer.—Unless it could be successfully set up that the bank had assented to the deposit of the cheque as collateral security, we think no claim could be established. If the marking is to be considered as an acceptance, the claim would, under ordinary circumstances, be barred by the Statute of Limitations. If it is a mere representation, not intended as an acceptance, the same result would follow.

MARKED CHEQUE RAISED SUBSEQUENT TO THE MARKING.

Question 152.—Could the bank on which a marked cheque is drawn, which has been "raised" after marking, be held responsible for more than the original amount under any circumstances?

Answer.—Before the decision in Schofield v. Earl of Londesborough, the only case we can conceive where a colour of claim to hold the accepting bank responsible might have arisen would be one where it had accepted a cheque so drawn that the increased amount might be written in without any alteration being apparent.

Cheque Marked before Hours.

Question 153.—A cheque was presented between 9 and 9.30 a.m., and paid by the bank to the payee, who wished to get his business transacted early. At 9.30 a.m., the drawer of the cheque gives the bank written notice to stop payment of the same. Would the bank be in any way responsible, having paid the cheque before hours?

Answer.—We think it is too late for the drawer to stop payment, and that the bank is protected.

Payment of a Countermanded Cheque—Responsibility of Officers.

Question 154.—The teller and ledger-keeper in a bank have both received a valid notice to stop payment of a certain cheque. It is presented to the teller for payment, and without requiring the holder to get it marked by the ledger-keeper as provided in the rule, he pays it. It is subsequently charged to the account by the ledger-keeper. Both officers have overlooked the notice stopping payment. Which should be held responsible?

(2) If a teller paid a forged cheque without requiring it to be marked by the ledger-keeper, and the latter subsequently charged it in the account without discovering the forgery, on whom would the responsibility rest?

Answer.—So far as the bank is concerned the loss if any was incurred as soon as the teller paid the item, and he should be held responsible. The ledger-keeper's act in charging the cheque to the customer's account would not change the bank's position, or relieve the teller from his responsibility, but if under the circumstances it could be fairly held that the ledger-keeper's negligence deprived the teller or the bank of an opportunity of recovering back the amount, the bank should in justice to the teller hold the ledger-keeper responsible for a portion of the loss.

(2) We would take a similar view in this case.

Endorsement of Cheque—Omission from Endorsement of Description of Payee.

Question 155.—A cheque drawn by the Order of Foresters payable to "Mary Jones, widow of our late member. John Jones of Court M——," is endorsed simply "Mary Jones." The bank on which it is drawn returns it, requesting a guarantee of endorsement. Are they entitled to this?

Answer.—We think not. The cheque is properly endorsed as it stands, and the paying bank is not entitled to further protection than that which the Act gives—the obligation of the bank which has received the money to return it should it prove that the Mary Jones who endorsed it is not the Mary Jones described in the cheque.

Cheque on an American Bank "Payable in New York Exchange."

Question 156.—The A. Co. and the B. Co., the first having headquarters in Canada, the latter in the United States, are really one and the same corporation, with the same shareholders, officers and directors acting on each side of the boundary line under different characters. The A. Co. keep an account with us.

On January, 1897, the A Co. deposited with us a cheque for $2,500 drawn on an American bank in G. by the B. Co., which cheque was made "payable in New York exchange." We mailed this on same day to our agents in G., but as there was no mail out until Monday, 1st February, it did not reach them until 3rd. The cheque was presented and a New York draft of the American bank given in payment. The draft was immediately forwarded to New York, but before payment could be obtained the American bank suspended. The draft was then returned to our agents, forwarded by them to and charged by us to the A. Co.'s account. The company's manager objected to this course, claiming that the American bank had paid the cheque, and that therefore the company were no longer liable to us. What are our rights?

Answer.—We find it difficult to answer this question definitely, since the item to which the enquiry relates, which is drawn in, and payable in the United States, is by its terms made payable in New York exchange. We do not know what the precise effect of this condition is, but we should take it to mean that the document is not, properly speaking, a cheque at all, as it is not an order for the payment of money, but an order for the delivery to the party named of a draft on New York. Under our law the item would therefore probably not come within the Bills of Exchange Act. If it were payable "with exchange on New York," that would imply payment in money with a certain allowance for the difference in the exchange between the point where it is payable and New York, and such a cheque is specially brought within the Bills of Exchange Act, by sec. 9 (d).

Assuming that what we have said as to the nature of the document is correct, we should suppose that you have no remedy against anybody except the failed bank.

It seems to us quite clear that recovery cannot be had from the customer. You gave him value for an order on an American bank, which order the latter bank literally complied with; that is, they delivered to your agent a draft on New York, which the latter accepted, apparently without any reservation, in satisfaction of the order or cheque.

The only party against whom you could have any claim whatever would seem to be your agents in G., and from the information furnished in the question we think that you would have no claim on them, for the course of your business with them, as suggested in the enquiry, indicates that they were authorized by implication—if not expressly—to take payment of such items in drafts of the drawee bank on their New York bankers. If so, they performed their duty as agents fully, and are under no responsibility. If, however, in accepting the draft of the American bank, which was dishonoured, they did something that you did not authorize them to do, they might be responsible. The terms in which the cheque is made payable would, however, seem to us to be against this.

The question is not affected in any way by the fact that the drawers of the cheque and the customers from whom you received it, are corporations owned by identically the same shareholders. This does not make them any the less distinct corporate bodies in the eyes of the law.

Your rights against the failed bank and the drawer of the cheque would be governed by the laws of the State in which the failed bank was domiciled, and they might give you a better claim than would exist here. On that point we cannot advise.

Sterling Cheque on Canadian Bank.

Question 157.—A man in London draws a cheque on a bank in Canada for so many pounds, shillings and pence. At what rate should it be paid?

Answer.—At the current rate for sight drafts on London at the place where it is payable on the day on which it is presented for payment. (Section 71, 2 (d), Bills of Exchange Act.)

(Note.—The copy of cheque sent by our correspondent is dated at a town in Canada, but we have answered the question as put. If drawn in Canada in sterling, the section quoted would not apply).

Cheque or Acceptance Signed for a Firm by an Attorney Presented after the Attorney's Death.

Question 158.—Would a bank be justified in refusing payment of a cheque signed by, or a bill accepted by, a person holding a power of attorney for a firm and signing as such, after having received advice of the attorney's death?

Answer.—Assuming that the cheque or bill had been delivered before the attorney's death, the bank should not refuse payment because of his death.

Paid Cheques.

Question 159.—Has a bank a legal right to retain paid cheques?

Answer.—In the absence of any special agreement, we think the customer is entitled to receive back his paid cheques, on giving the bank a proper and sufficient acknowledgment of the state of his account.

Memoranda of Partial Payments Endorsed on a Cheque.

Question 160.—A gives his cheque to B in payment of a debt, and B endorses to C. The cheque is dishonoured. A, later on, makes partial payments in respect of the debt represented by the cheque, the amounts so paid being noted by C at one end of the back of the cheque, but without any indication as to who made the payments, thus:

July 2nd—Received $5.00 on cheque.
" 5th—Received $3.00 " "

C.

The bank afterwards pays the cheque to the holder, at its face, ignoring or not observing the memoranda on the back.

Would the bank be liable to the drawer in respect of the amount of A's debt thus overpaid?

Answer.—We think there was nothing in the circumstances to operate as a countermand of the express terms of the cheque. The bank would have been justified in withholding payment until the endorsement had been explained, and it would have been wiser to have adopted such a course, but we think they are entitled to charge the whole amount to their customer's account.

Cheque Payable at a Future Date.

Question 161.—A cheque dated 4th November, contains in the body the following instructions: "On 20th November pay $50." Are these instructions binding, and is the drawee entitled to days of grace?

Answer.—This is a bill of exchange payable on 20th November, with three days' grace. It is not a cheque, because it is not payable on demand.

Cheque Marked Payable only after a Certain Date.

Question 162.—It is obligatory upon a bank to pay a cheque upon presentation, when upon face of same a proviso making it mature fifteen years after date appears? Could such cheque be looked upon as a demand item, and if refused by the bank upon which it is drawn, could it be legally protested? I am assuming that the cheque is presented for payment sometime between the date of same and date of maturity according to proviso.

Answer.—Such a cheque as described is in effect a bill of exchange, payable after a certain date, and it is not only not obligatory on the bank to pay it before maturity, but if it did so it would incur a serious risk. If, for instance, before its maturity the drawer were to stop payment, the bank would have no claim on the endorser, because the negotiation of a bill of exchange to the drawee kills remedies of that kind, and it would have no claim on the drawer, as he has a perfect right to countermand his order to pay before it has been acted upon. The bank might acquire any claim, which, as between the drawer and payee, the latter might have had on the countermand cheque, but this, as we have said in our note on "Post-dated cheques," p. 3, vol. Q, would be a very doubtful and shadowy claim.

Cheque Payable only on Personal Endorsement of Payee.

Question 163.—A depositor notifies his banker that he has issued a cheque payable to the order of John Smith, and wishes it paid only on the personal endorsement of John Smith. Is the banker bound to respect such a request, or would he be justified in accepting said cheque, tendered by payee's clerk, and endorsed "For deposit only to credit account of John Smith"?

Answer.—We think the bank is bound to act on the instructions of its customer in the case mentioned. He has a right to countermand payment, and the bank is bound to obey his orders. The instructions quoted do not go as far

as that, but they are very much in the same line, and it would, we think, be held to be within the customer's rights to require the bank only to pay the cheque when it is endorsed as he specifies.

In any case the holder of the cheque the payment of which has been refused on the instructions of the drawer, would have no claims whatever against the bank. If the cheque were endorsed by the duly constituted attorney of the payee, and refused because of the customer's orders, the bank would still not be liable to anybody. The holder would, however, have a valid claim on the drawer, and (if notice of dishonour were given) on the endorser.

Cheque Payable to A B on the Endorsation of C D.

Question 164.—A cheque is made as follows: "Pay to A B upon the endorsation of C D." The cheque is endorsed "C D" only. Is the endorsement of A B necessary, and has the paying bank any right to refuse payment of the cheque, it being not endorsed by A B?

Answer.—Such a form of order in a cheque would be most unusual. The endorsement of both A B and C D should be required; otherwise the drawer should be asked for instructions.

Cheque Payable to Bearer.

Question 165.—Can the holder of a bill or cheque payable to bearer endorse it "Payable to the order of A"? In other words, a bill or cheque being originally payable to bearer can any holder or endorser make it payable specially or restrictively?

Answer.—Under sub-section 3 of sec. 8, Bills of Exchange Act, it is declared that "a bill is payable to bearer which is expressed to be so payable." This seems to preclude the possibility of such a bill being made payable otherwise than to bearer, and when a cheque is so drawn the drawer's instructions are not affected by an endorsement, and the bank is protected in paying it to bearer, in accordance with its terms.

If the holder of such a cheque desires to protect himself from loss, he can do so by crossing the cheque generally or specially as he may desire.

CHEQUE TO BEARER DRAWN ON AN OUTSIDE POINT—B. 'K'S RIGHT TO REFUSE NEGOTIATION WITHOUT THE CUSTOMER'S ENDORSEMENT.

Question 166.—May a bank refuse to negotiate a cheque drawn on some other point and payable to bearer, unless endorsed by the customer?

Answer.—A bank may refuse to cash a cheque under any conditions whatever.

If, however, the question intended is whether a bank acts reasonably in refusing to cash such a cheque for a customer without his endorsement, we should say that such a refusal is most reasonable.

The only cheques about the payment of which the bank is under any obligation are those drawn on itself. If a cheque on itself payable to bearer is presented, it cannot call on the bearer to endorse it as a condition of payment.

CHEQUE PAYABLE TO "BEARER" ENDORSED TO "ORDER."

Question 167.—A cheque payable to John Smith, and properly endorsed:

"Pay to bearer,
John Smith."

is subsequently endorsed:

"Pay to the order of Peter Jones,
A. B. C."

The bank on which it is drawn pay the cheque without the endorsement of Jones,—probably an oversight—but defend their action on the ground that the endorsement of Smith makes the cheque payable to bearer, and that no subsequent endorsement can change it. Were they right?

Answer.—With regard to a cheque which has been made payable to bearer by endorsement, and then by subsequent endorsement made payable to order, before the Bills of

Exchange Act was passed in England the law there very clearly was that a bill so endorsed remained payable to bearer, notwithstanding subsequent endorsements; provision was, however, made in the Act (sec. 8, sub-sec. 3), which was intended to alter the law in this respect. Chalmers, who framed the bill, says that this section was intended to bring the law into accordance with the mercantile understanding, by making a special endorsement control a previous endorsement in blank.

This sub-section does not appear to have ever been judicially interpreted, and it does not seem to clearly negative the idea that a bill may be payable to bearer under such circumstances as you mention, for it does not necessarily follow that the converse of sub-section 3 is true. We have not been able to find a case bearing on the point, but in view of the explicit declaration of Chalmers we should think it very doubtful if the position taken by the bank you mention would be sustained.

Cheque Payable to "Cash or Order."

Question 168.—Does a cheque payable to "cash or order" require the endorsement of the drawer?

Answer.—No. If "cash" means literally "cash" and is not the name of a person, the cheque should be treated as payable to bearer. (See section 7, sub-section 3, Bills of Exchange Act.)

Cheque Payable to an Insolvent, Deceased.

Question 169.—A man assigns and within a week dies. A cheque dated after his death which is made payable to him personally is presented for payment. Should the assignee of the estate or his executor or administrator endorse the cheque?

Answer.—If the cheque was given for a debt due at the time the assignment was made, we think the money might be safely paid to the assignee. On general principles the executor or administrator should endorse.

Cheque in Favour of John Jones Paid to another Party of that Name.

Question 170.—(1) I make a cheque payable to John Jones. This fall into the hands of the wrong John Jones, who presents it, demanding payment. The teller, knowing him to be John Jones, pays cheque. Is the teller liable for paying to the wrong person? (2) Is the bank liable?

Answer.—Although the rule seems a hard one, the payment in such a case is not properly made, and the bank has no right to charge the cheque to the customer's account.

As between the bank and the teller the latter is of course in the same position as if he paid a cheque on a forged endorsement.

Cheque Payable to John Smith, Guardian for Mary and Patrick Brown. Endorsed "John Smith, Guardian."

Question 171.—A cheque made payable to "John Smith, guardian for Mary and Patrick Brown," is endorsed "John Smith, guardian." Is this sufficient?

Answer.—We think the full description is unnecessary, and that if he endorsed simply "John Smith," without any addition to his name, it would be a valid discharge.

Cheque Payable to "James Smith, Overseer," Endorsed "James Smith."

Question 172.—(1) With reference to your reply to Question 171, is a bank justified in returning as not properly endorsed a cheque which is payable to "James Smith, Overseer," and endorsed simply "James Smith"?

Your answer to question above referred to, indicates that such an endorsement is sufficient. Should the principle involved be generally accepted, and the endorsement stamp of the depositing bank be accepted as a sufficient guarantee to the paying bank in such cases?

Answer.—It seems to be the practice in England to treat such endorsements as incorrect, but we are advised that they are sufficient and consequently we can only say that we think a bank would not be justified in returning the cheque described merely because the word "overseer" has been omitted from the endorsement.

We are of opinion that so long as the endorsement on an item is such that (assuming it to have been put on by the payee or endorsee) it constitutes a valid discharge, it should be accepted without question from the depositing bank, which would, in such a case, be responsible if the endorsement proved to be defective.

Endorsement of Cheque Payable to "Mrs. John Smith."

Question 173.—A cheque is drawn in favour of and endorsed, "Mrs. John Smith." Is the endorsement legal?

Answer.—If the cheque were endorsed in that form by the payee we think it would be a valid endorsement; see sec. 32, sub-sec. 2, Bills of Exchange Act," but the custom in such case is for the bank not to pay the cheque unless endorsed in the usual manner, as follows:

Mrs. John Smith,	or	Sarah Smith,
Sarah Smith,		wife of John Smith,

Cheque in Favour of Mrs. J. Smith, Endorsed "Mrs. J. Smith."

Question 174.—Is the following form of endorsement, (1) valid as a matter of law, and (2) regular according to the Clearing House Conventions: Cheque drawn in favour of Mrs. J. Smith, endorsed "Mrs. J. Smith."

Answer.—(1) The endorsement is valid as a matter of law.

(2) So far as the rules are concerned, we think they leave the matter an open question. Such an endorsement seems to us to comply with the second clause of Rule 2, inasmuch as the names correspond; but if it were so placed as

not to show clearly that it is intended as an endorsement, it would be an irregular endorsement requiring a guarantee under Rule 8.

Cheque Drawn to "Order" altered to "Bearer" by Drawer after being Marked Good.

Question 175.—A cheque drawn payable to John Smith or order is marked good by a bank, specially to pay a pressing claim of John Smith's. Subsequently it is altered by the drawers—who are also the holders—from "order" to "bearer," and cashed at an outside bank by the drawers, who used the money to satisfy what they considered a still more pressing claim than that of John Smith.

Can payment of the cheque be legally refused by the bank until endorsed by John Smith?

Answer.—The bank on which a cheque which has been materially altered after being marked good, is drawn, would have the right to refuse payment, not because of the want of any particular endorsement, but because it is an altered cheque, and therefore void under sec. 63 of the Bills of Exchange Act.

The usual question arising out of such circumstances as you mention is whether the bank is justified or safe in paying the cheque. If the bank had come into privity with the payee of the cheque, by the cheque having come into his hands after they had accepted it, they certainly could not then pay it to another person without his consent. If, however, the cheque has remained in the hands of the drawer, and has never been delivered to the payee, any arrangement between the bank and the drawer respecting the cheque would be free from risk.

Cheque to "Order" Endorsed by the Payee "without Recourse."

Question 176.—(1) A cheque payable to order is presented for payment by the payee, bearing above the endorse-

ment the words "Without recourse to me." Should the bank refuse payment?

(2) Is there any danger in negotiating a marked cheque so endorsed by the payee?

Answer.—(1) If the payee of a cheque, who is receiving payment thereof from the bank on which it is drawn, chooses to write over his signature the words "Without recourse to me," we do not think that need effect the willingness of the bank to pay. The bank has in such a case no claim on him as endorser, and his disclaimer is mere surplusage. It would not relieve him from liability to return the money if it should prove that he is not the proper person to whom the money should have been paid, i.e., that he is not really the payee.

(2) The danger in negotiating a marked cheque on another bank so endorsed, is that the endorser would not be liable if the bank were to repudiate the marking or were to fail. Such an endorsement would not relieve the endorser from liability to return the money if it has been wrongly paid him.

Cheque Payable to the Order of a Failed Firm.

Question 177.—Supposing an assignment for the benefit of creditors were made by a firm, say John Smith & Co. Would the endorsement of this firm, which is *commercially dead,* be a discharge to the bank cashing a cheque payable to the firm's order? Would it not be necessary to have the endorsement of the assignee?

Answer.—We assume that the assignment by the firm worked a dissolution of the partnership. The law is well settled that the dissolution of a firm operates as a revocation of the authority of each partner to bind the other by new contracts, etc.; but this statement must be modified with respect to the authority of the partners to arrange, liquidate and settle the affairs of the firm. As an assignment by the firm would vest in the assignee the ownership of the assets, he only has authority to wind up the business, by collecting the assets.

It must be borne in mind that the assignee is assignee only of the assets of the firm; he does not represent the firm generally, nor has he power to use its name unless expressly authorized to do so by the assignment or by some statute. If the cheque be given for a debt due to the firm the receipt of the money by the assignee and his endorsement of the cheque would probably for all practical purposes end any question as to the sufficiency of the endorsement.

But this practical question must not be confounded with the legal question involved. The assignee (unless expressly authorized as already mentioned) would have no power to endorse the firm's name, and the endorsement of his own name would not answer the order of the drawer of the cheque. The drawer's direction is to pay to the order of the firm. We do not think that, under the circumstances indicated in the question, the cheque could be treated as payable to a fictitious or non-existing person, and, in the absence of express authority from the other partners, we think that the endorsement of the name of the firm by one partner would not be technically sufficient; it would require the endorsement of each member, or of some one authorized by each member to endorse the dissolved firm's name.

As indicated above, the question would not be likely to arise if the money got into the proper hands. It would be more likely to arise if the cheque were presented, not by the assignee, but by some other person claiming title through the previous endorsement.

Cheque to Order not Endorsed: Endorsement of Payee's Banker.

Question 178.—Do you approve of paying cheques drawn to order bearing in lieu of the payee's endorsement the following: "Deposited to the credit of account of (the payee), endorsement guaranteed. John Smith, Manager, Bank of A."

If the payee should afterwards dispute the payment, would the above form any protection?

Answer.—Such a statement written on the back of the cheque is of course not an endorsement in the proper sense, but may be regarded as the receipt of the Bank of A., with a declaration that they have credited the amount to the party entitled to receive payment. This does not comply with the terms of the customer's order, and it is clear that if the payee did not approve of it, he could repudiate the act of his bankers, and in that event the paying bank would doubtless have to recognize his claim, but would be entitled to look to the Bank of A. for protection.

As a practical question the chances of trouble are exceedingly remote, nevertheless, we do not think the practice can be regarded as a satisfactory one, and it should be resorted to as rarely as possible. We would also think it better that the writing should purport to be an endorsement, even though this is unauthorized, by the use of such phrase as this. "For John Brown, the Bank of A., John Smith, Manager." This would not constitute a regular endorsement under the rules, as the authority of the person signing is not, and in the nature of things could not be, indicated. It should, therefore, be guaranteed under section 8 of the Rules. A guarantee, however, is scarcely necessary from the point of view of fixing the liability of the collecting bank. A bank which undertakes to endorse on behalf of a customer implies that it has authority to do so, and is responsible if the endorsement is repudiated.

Cheque Payable to Order—Right of Drawee Bank to Demand Endorsement.

Question 179.—Section 8, clause 5, of the Bills of Exchange Act reads: "Where a bill is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order, at his option."

Does this mean that if a cheque is drawn, for instance, "Pay John Smith or order," John Smith can demand payment from the bank on whom drawn without endorsing the cheque or giving the bank a receipt, or what does it mean?

Answer.—If a cheque is worded "Pay to the order of John Smith," a literal interpretation of the drawer's instructions would exclude any right of John Smith personally to receive payment, as it is clearly an order to pay, not him, but his endorsee. The clause mentioned was passed to make the words quoted equivalent to "pay to John Smith or order."

The question of the right of a bank to demand the payee's endorsement has been frequently discussed, and the view expressed that it has such a right. It may be urged that if a customer instructs the bank to pay a certain person, his instructions must be obeyed, and the bank must preserve such evidence of the payment as it can, that being the general rule with regard to all payments by debtors. But the bank, in our opinion, is entitled to rely on the universal practice of banks on this point as governing its relations with its customer, and to treat its contract with him as one under which it is bound to pay his cheques, provided it has funds, and provided also that the customary requirements as to endorsement are fulfilled.

It is to be remembered further that the customer is entitled, before he ratifies the payments made on his behalf, to have his order cheques endorsed by the payees, or to have satisfactory evidence that they have been so paid.

Cheque Payable to "Order"—Right of Bank to Demand Payee's Endorsement.

Question 180.—John Jones gives a cheque on the Bank of Montreal, Toronto, payable to C. Smith or order. Mr. Smith presents the cheque for payment, but refuses to put his name on the back. Can the bank, who know him to be Mr. C. Smith, refuse to cash the cheque without his endorsement?

Answer.—We are of the opinion that bank on which a cheque is drawn, is entitled to have the payee's endorsement placed on the same before paying it, to serve as a receipt of acquittance for the money. We base this view on the well

understood practice of banks, which amounts, we think, to a contract with the customer, (a) that it will pay out money received for credit of a current account, as the customer may instruct, provided it receives a proper discharge for the payment, and (b) that it will furnish the customer with a proper voucher for any money paid on his account.

Looked at in either way it is clear that a cheque needs to be endorsed by the payee in order that the voucher may be in itself a complete document. The case differs altogether from that of an ordinary debtor who is bound to find his creditor and pay him the debt, and is not entitled to a receipt, but must himself preserve such evidence as he can of the payment. The bank is not under any liability to the person presenting the cheque and whatever contract exists with the drawer is certainly on the lines presented above.

Right of Drawer Bank to Demand the Endorsement of the Payee of a Cheque to "Order."

Question 181.—(1) A cheque is drawn "Pay to A. B. or order." The payee presents the cheque for payment to the bank on which it is drawn. Can the bank refuse payment unless the payee endorses the cheque? (2) Is a party receiving the money in payment of a debt due him obliged to give a receipt for the money?

Answer.—Both there enquiries are covered in the reply to question 180.

Cheque to Order Deposited Unendorsed.

Question 182.—(a) A. Jones deposits with his bank a cheque, which he neglects to endorse, the cheque being made payable to his order. His banker endorses on the cheque: "Deposited to the credit of A. Jones," and signs his name as manager of the bank. Would this constitute an endorsement?

(b) If the cheque was not paid when presented at the bank on which it was drawn, could the banker, who endorsed

it as stated above, recover the amount of the cheque from A. Jones?

Answer.—(a) This is not an endorsement.

(b) The bank could, we think, recover the money from its customer, not because he was liable on the bill which he had neglected to endorse, but because the bank had given him value for it on the understanding that it would be endorsed over to the bank, and that the omission of the endorsement was a mistake which he must make good or return the money. The bank, however, has a right to demand the customer's endorsement under sub-section 4 of section 31 of the Bills of Exchange Act.

Cheque Payable to and Presented by an Insolvent Who has just Assigned.

Question 183.—(1) A party having just assigned received, subsequent to assignment, two cheques, one from a creditor of the estate, and one from a friend, both drawn payable to his own order. Is the bank, knowing of the duly registered assignment, justified in cashing to the payee on his endorsement either or both cheques?

(2) Would the bank, unaware of the assignment, and cashing in good faith, be responsible?

(3) What is the responsibility of the drawee of the cheques in above instances?

Answer.—The duty of the bank to its customer is to cash his cheques if there be funds therefor, in accordance with the directions therein. It is a matter between the drawer of the cheques and the assignee of the insolvent, or a matter between the insolvent and his assignee, and not one for the bank to consider with respect to the effect of the assignment. The assignment does not affect the order of the customer contained in the cheques, and in the absence of instructions from the customer the bank is not only justified in honouring them but might be rendered liable for damages if it did not do so.

Cheque to the Order of "Sam Jones"—May the Bank Pay to Anyone of that Name?

Question 184.—If a cheque is drawn in favour of Sam. Jones without any further description of payee, can the bank pay the money to any Sam. Jones, or is it the bank's duty to find out to which Sam. Jones the cheque belongs?

Answer.—The bank would we think be responsible if it paid the money to anyone other than the Sam. Jones to whom the cheque belongs.

Cheque Payable to "Self," with Words "or Bearer" Scored out.

Question 185.—A cheque is drawn by John Smith, payable to "self," the word "bearer" being scored out; in other respects the cheque is in accordance with the common form. Is it legally payable to order?

Answer.—Such a cheque must be regarded as payable to John Smith (the drawer), or order. (Bills of Exchange Act, sec. 8, sub-sec. 4).

Cheque in Payment of Goods Accepted by Secretary of a Patron Organization, Payable to Himself Personally, and Negotiated with a Bank — Cheque Dishonoured—Rights of Holder.

Question 186.—John Smith having been appointed secretary and treasurer by the patrons of a cheese factory, engages to manage the business, make the cheese and sell the same, for a remuneration of so much per pound. He makes a sale of cheese, receives an unmarked cheque for the same payable to himself personally, endorses the cheque (in his own name alone), and negotiates it with a bank. The cheque is returned dishonoured. Can the holder recover from the patrons, Smith being their paid agent and the cheese really their property?

Answer.—The questions involved here are chiefly questions of fact. If the relations between John Smith and the bank were such that the latter could successfully set up that

they were dealing with him as agent for the patrons, they could no doubt look to the latter to make good the agent's liability.

If, however, he was only authorized as agent to sell for them for cash, and not on credit, it could scarcely be said that the unmarked cheque was taken under their authority, and it would probably prove that John Smith took the cheque at his own risk, and that he alone is responsible to the bank, as endorser for its non-payment.

On the state of facts indicated by the question, we should say that the bank would have great difficulty in establishing any claim on the patrons, but a definite opinion could not be expressed without hearing both sides of the case fully.

Irregular Endorsements.

Question 187.—A certified cheque on a bank in California, payable to Stephen Jones and Mrs. William Smith, and endorsed S. Jones and Sarah Smith, is paid by a Canadian bank. It goes forward endorsed by the bank in the regular way, and when presented by the Bank of B. to the drawee bank (the Bank of C.), is refused because endorsation is claimed to be irregular.

The cheque is protested by the Bank of B. The Canadian manager cannot have foreseen that it would be protested, as, according to our custom, if refused it would have been returned for guarantee of endorsement.

The drawer of the cheque (the customer of the Bank of C.) made all the trouble by putting "Mrs. Wm." instead of "Mrs. Sarah." Who should pay the costs in this case?

Do you not think it would be advisable to request Canadian bankers to use the Christian name of married women when selling drafts, etc.?

Answer.—The practice of Canadian banks, or the natural expectation of the Canadian banker in the particular case referred to, do not seem to us to have any bearing on the question involved, nor does the mistake of the drawer of

the cheque, in putting "Mrs. Wm. Smith" instead of "Mrs. Sarah Smith" seem to us to affect the question.

The parties receiving the cheque could have prevented any trouble by returning it and requesting that a cheque in the proper names be issued, or by procuring Mrs. Smith's signature in the form required by the cheque, and we believe customary in such cases, i.e.,

"Mrs. William Smith,
Sarah Smith,"

The question then simply is, was the cheque properly protested by the collecting agent, and if so, who should bear the costs incurred?

We are of the opinion that the bank was justified in protesting the cheque, and that the costs are chargeable against the parties for whom the Canadian bank cashed it. On the return of the cheque protested for non-payment the bank would be entitled to collect from them the amount of the cheque and all charges.

The practice of making cheques or drafts payable to married women in the form used in the above case is open to serious objection, and should, we think, be discouraged.

Cheque Presented by a Debtor of a Bank.

Question 188.—The payee of a cheque drawn to order endorses it and presents it for payment. Can the bank rightfully apply the funds upon an overdue note it holds of the payee? What if payee claims that funds for cheque are not his own? Would the drawer have any grounds for objecting or legal remedy against the bank for so treating his cheque?

Answer.—The committee have thought it well to refer the above questions to the counsel for the association, Mr. Z. A. Lash, Q.C., and the following has been framed under his advice as to the law affecting the matter:

The questions involve some nice considerations. There are two aspects in which the matter may be viewed: first, the strictly legal one; second, the ethical one. Upon the

latter, opinions of course may vary, and there is no rule for decision. We therefore refrain from expressing any opinion upon this branch, leaving each bank to decide for itself whether, under the particular circumstances which may surround the case, it would as a matter of ethics be justified in retaining the proceeds of the cheque.

With reference to the legal aspect, there appear to be no reported decisions expressly governing the case. The answer to the question as to the payee's rights against the bank, may, we think, be worked out in principle upon these lines:

Assume that the payee is the beneficial owner of a cheque. He presents it for payment. The bank accepts it in the usual way. This acceptance brings the payee into privity with the bank, and enables him to bring an action against the bank in his own name upon the cheque. If, therefore, instead of retaining the cheque and crediting the payee with the proceeds, the bank should hand back the accepted bank cheque to the payee and then refuse to pay it, the payee might bring an action against the bank for the amount. If he did so, what would be the bank's position? Clearly it could set off against such action the amount of the overdue note. If, however, the bank retains the cheque and claims to apply the amount upon the overdue note, what would be the payee's remedy? We think he could proceed in three ways:

(1) To sue in trover for the conversion of the cheque, or speaking less technically, he could sue the bank for damages because he had been deprived of his property, viz., the cheque. The amount of his damages in this case would be the value of the cheque. He could have no further claim.

(2) If the bank has appropriated funds to the payment of the cheque—for instance, if the teller had counted out the money and had told the payee that it was the money for the cheque—he could probably sue the bank to recover the amount as money held by the bank for his use.

(3) He might possibly treat the possession of the cheque by the bank as his possession, and sue upon the acceptance.

If he took the last course, then the bank would, as above stated, have the right to set off the amount of the overdue note. If he took the second course the bank would have the same right, the demands in each case being liquidated. But, if he took the first course, the right of the bank to plead set off, as such, would be extremely doubtful, because set off can only be pleaded where the demand to which it is pleaded is a liquidated demand or one capable of being ascertained by computation as distinguished from a demand where the amount must be ascertained by assessment or va ion.

But the bank's right would not in such a case, be confined to pleading set off. Under the practice of the Courts in Ontario, where a defendant is allowed in his defence to set up by way of counterclaim any demands against the plaintiff, the bank could in its defence to the action counterclaim for the amount of the overdue note. It would, of course, get judgment upon this counterclaim, and, even if the payee got judgment against the bank for the amount of the cheque as damages for its conversion, the practical result would be that the two judgments would be set off one against the other, and the only question involved would be one of costs.

If the cheque, though payable to the order of the payee, really belonged to some other person, it is, we think, clear that the bank would not have the rights above explained. It could not pay its own claim against the payee out of funds belonging to another.

Our space for this number of the Journal will not allow us to deal with the other question, viz., whether the drawer would have any grounds for objecting, or legal remedy against the bank for so treating his cheque. We will allude to this branch of the question in our next issue, and explain also the rights of the payee against the drawer.

Cheque Presented by Payee, Who is a Debtor of the Bank.

Question 189.—The payee of a cheque drawn to order endorses it and presents for payment. Can the banker rightfully apply the funds upon an overdue note he holds of the payee's?

What if the payee claims that funds for cheque are not his own?

Would the drawer have any grounds for objecting, or legal remedy against the banker for so treating his cheque?

Answer.—In Question 188 we replied to the first portion of the above question under the advice of counsel, and undertook to deal with the remaining clause later on. This we now do.

The right of the drawer of a cheque having funds at his credit, is to have the bank pay his cheque on presentation, and should the bank refuse to do so without proper excuse, the drawer would have ground for action against the bank, and would be entitled to recover substantial damages to be assessed by a jury, without proving actual damage as the result of the refusal to pay the cheque. If what took place between the bank and the payee of the cheque amounted to a refusal of payment, we think the drawer could complain and that the bank would be liable for damages for this refusal. Whether the bank refused or did not refuse to pay the cheque, would be a question of fact to be decided upon on the circumstances.

With reference to the position of the payee as against the drawer of the cheque the decisions are reasonably clear. *Prima facie* the cheque is not given nor accepted as payment of a debt. It is a mere order on the bank to pay, and if not honoured the debt remains, and the payee can sue the drawer for it. But there is of course nothing to prevent the drawer and the payee agreeing that the cheque should be taken as payment, and if it were so taken the debt would be discharged, and in such a case if the cheque should be dishonoured, the payee's remedy is upon the cheque only and not upon the

debt. If the bank refused to pay the cheque and if there were no agreement that it was accepted in payment of the debt, then the payee could sue the drawer of the cheque for the debt.

Such a state of facts could be imagined which would amount to payment of the cheque so far as the drawer is concerned, and which would entitle the bank to retain the money and set it off as against the debt owing to it by the payee; for instance, if the teller actually counted out the money and told the payee that it was the money for the cheque, and if the payee assented to this appropriation. But for practical purposes the inference which would no doubt be drawn by a court or jury in nine cases out of ten would be that the payee had not assented to the appropriation and that payment of the cheque had in effect been refused.

Cheque Presented for Payment after the Drawer's Death.

Question 190.—A cheque was presented, for which there were funds, but was refused because the drawer had died on the day before presentation. In a similar case a few years ago within my knowledge the drawee bank paid rather than stand suit. What is the law in the matter, and what is the effect as regards the drawee bank, if a cheque is paid after it has notice of the drawer's death?

Answer.—By section 74, Bills of Exchange Act, it is declared that "the authority of a bank to pay a cheque" is "terminated by notice of the customer's death." It is therefore clear that in the cases mentioned, the bank would have no right to pay the cheque. If it should nevertheless do so its ability to get back the money would depend on the good will of the parties. If the cheque were given in payment of a just debt, and if the estate is solvent, no doubt the payment would be ratified by the executors, or the creditor would assign to the bank his claim against the estate. If the executors refused to recognize the payment, and if the creditor refused to assign his claim, the bank would have to

lose the amount. The same result would probably follow if the cheque so paid proved to have been given otherwise than in payment of a debt, e.g,. as a gift.

Presentation of a Cheque for Payment — Due Diligence.

Question 191.—A suburban office of a city bank (or a bank not a member of the clearing house) receives a cheque from a customer on Saturday at ten o'clock a.m., hands the same to its city office (or its clearing bank) on Monday, and such city office (or clearing bank) presents it for payment on Tuesday through the clearing house. Was the said cheque in your opinion presented for payment within a reasonable time within the meaning of the Bills of Exchange Act?

Answer.—We think so. The question is to be determined by the nature of the instrument, the usage of trade, and the facts of the particular case (section 45 b). It is customary for persons receiving cheques to deposit them with their bankers, for such bankers to forward them to their correspondents for collection, when they are not drawn on banks with which they make direct exchanges, and for the correspondents to present them for payment through the clearing house or otherwise on the following day. If such a mode of collection is admitted to be reasonable, and each party negotiates or forwards the cheque within twenty-four hours after it is received by him, the procedure is clearly in order. The Act contemplates a negotiation of cheques, which might delay their presentment without necessarily discharging the endorser. (See section 36 (3), and compare section 40 as to sight bills).

Cheque Received from a Customer on Deposit, with a Prior Endorsement Forged.

Question 192.—A cheque in favour of one T. A., and purporting to be endorsed by him, is received from a customer of ours on deposit: he endorses the cheque after T. A. We send it to another bank, which collects the amount from the

drawee bank, but first stamps on the cheque a guarantee of the prior endorsements. This guarantee is given without the authority of the prior endorsers. T. A.'s endorsement proves to be a forgery. Is the liability of our customer affected by the guarantee, and what is its effect generally?

Answer.—Assuming that notice of the forgery has been given within reasonable time, as required by the amendment to section 24 of the Bills of Exchange Act, your customer must repay the amount. His liability is not affected by the guarantee of the prior endorsements, which in this case is a contract only between the bank which guarantees and the drawee bank.

The effect of such a guarantee generally is to make the guarantor liable to return the amount to a subsequent holder if the endorsements prove to be forged or unauthorized. The law imposes practically the same liability without the guarantee, but liability under sec. 24 (as amended) is conditional on reasonable notice being given after discovery, while liability under a guarantee is a matter of contract, which might exist until barred by the Statute of Limitations. The guaranteeing bank might therefore be liable under its contract of guarantee, under circumstances in which the prior endorsers would be discharged, by reason of want of notice within reasonable time.

We do not think guarantees should be asked or given except for irregular endorsements, as provided in the rules adopted by the Association, but that each bank paying or negotiating a cheque should do so on the protection afforded by the statute, and subject to the performance of its duty in connection therewith.

Cheque Returned Unmarked by Drawee Bank, for Proper Endorsation—Funds Withdrawn before Representment—Liability of the Bank.

Question 193.—A cheque drawn on one of their country branches is received by one Toronto bank from another, through the clearing house. There are funds for the cheque

when it reaches its destination, but on account of the endorsement being irregular, it is returned, and while it is in transit the drawer assigns (or withdraws the funds as the case may be). Is the endorsing bank released from liability because the cheque was not marked good?

Answer.—We think it was the duty of the country branch to have marked the cheque when presented before returning it to be endorsed, but we do not think that it was legally bound to do so, or that it can be made responsible for the withdrawal of the funds afterwards. It would follow, therefore, that the endorsing bank is not released.

Insufficient Funds for a Cheque.

Question 194.—Would you think it well to amend the law so as to give to the holder of a cheque for which there are not sufficient funds, a right to receive whatever amount there may be at credit of the account?

Answer.—We think that it is now permissible for a bank to accept a cheque for part of its amount, and of course, subsequently to pay the partial amount, but it is not obligatory, and we think that as a practice it would be open to objection. As far as the interests of the bank are concerned, we think that any legislation giving the holder of an unaccepted cheque rights against the bank would be highly undesirable. At present banks are responsible only to their own customers for what they do, or omit to do, in respect to any unaccepted cheque, and to alter this position would involve serious consequences.

Rights of the Holder of a Cheque against the Drawee Bank.

Question 195.—In your reply to Question 194, you say that the acceptance by banks of cheques for part of their amount would be a practice open to objection. Would you kindly state the principal objections?

(2) You also imply that to give the holder a right to demand payment of part of the cheque when there were

insufficient funds for the whole "would involve serious consequences." In "Girouard's Bills of Exchange Act, 1890," p. 260, the case of Gore Bank v. Royal Canadian Bank, 13 chap. 425, is quoted: "If a bank refuse to pay a cheque, having sufficient funds of the drawer for the purpose, the holder can compel payment in equity." If this rule holds good it might be in the interests of all to extend it to a case of "insufficient funds."

Answer.—(1) The chief objection is the trouble and risk of error involved for which the trifling profit derived from the class of accounts where such things might happen would never pay.

(2) The remark cited is contrary to the well-recognized rule, that until a cheque has been accepted, the holder is not in privity with the bank, and no one can proceed against it in connection with the cheque except the drawer. It had nothing to do with the merits of the case, but was a mere passing remark.

As to the consequences of a change in the law, the following among other considerations may be mentioned:

If the holder had a right to demand payment it would involve a duty on the part of the bank to pay on his demand if it held funds, and a consequent responsibility to him for any error in refusing payment. At present, whether the bank pays a cheque or refuses it, if it refuses one cheque and immediately after pays another, if it overlooks a credit, or charges the customer with wrong debit, the matter is one which affects only the bank and the customer, and a reasonable and friendly settlement of any mistake is in practically every case assured. It needs little imagination to forecast the difficulties that would arise if the bank had to reckon with a holder who was (or thought he was) unjustly treated. To give such a right to holders of cheques for which there are insufficient funds is open to other practical objections, such as the labour and risk of errors it would involve, and the endless disputes which might be expected to result.

Cheque Sent for Collection and Lost in the Mails.

Question 196.—On July 18th we sent a cheque on a branch of La Banque Ville Marie to that branch for collection. On July 26th (which would be the usual time to ask its fate), hearing of the suspension of the bank, we wired them to remit cash or return it at once, to which they replied that it had not been received. On the same day we notified the endorsers (from whom we have a general waiver of protest), that it had not been paid, and suggested that they notify the drawer.

The drawer writes that the cheque has not been charged to him, but that, as he sent it to the endorsees on July 14th, they had ample time to cash it before the suspension, and he disclaims any responsibility. As they are out-of-town customers, we claim that the cheque was forwarded in the ordinary course of business, and the drawer was notified of its non-payment as speedily as circumstances permitted. On whom do you think the loss (if any) should fall?

As the cheque has not turned up in the mails, as yet, what action should be taken?

Answer.—We think the drawer is responsible notwithstanding the delay in presentation, assuming th[illegible]here was no unreasonable delay on the part of the payee or the bank in sending the cheque forward.

If a cheque is not presented within a reasonable time, then under sec. 73*a*, the drawer is discharged to the extent of any damage he suffers by such delay, but delay in making presentment for payment is, under sec. 46, excused when the delay is caused by circumstances beyond his control. Delay in the post-office would, we think, come within this rule.

Cheques Signed by Attorney, the Depositor's Name being Written without the Addition of the Attorney's Name.

Question 197.—A B has given C D a power of attorney to sign cheques on his account, and in a letter to the bank

asks that the cheques may be honoured when signed by C D, by writing A B's name without adding anything thereto. Is it in order for the bank to honour cheques signed simply with the name A B, such signature being placed on the cheque by C D?

Answer.—This is quite in order. The only question involved is one of proof, and doubtless the bank would be quite as able to prove the authenticity of the signature in that shape as in any other.

If similar instructions had been given with respect to endorsements it would be contrary to the "Rules and Conventions respecting Endorsements," which provide that the person signing in such a case must indicate his authority by words added to the signature. This rule, however, was adopted as a matter of policy, not as expressing a legal requirement.

Stop Payment.

Question 198.—A, who was the holder of a cheque signed by B, payable to bearer, notifies the drawee bank that he has lost said cheque and wishes payment stopped.

By section 74 of the Bills of Exchange Act, the bank's duty to pay it terminated by countermand of payment.

(1) Must not this countermand be given by maker alone?

(2) If the bank refuses payment on the notification not to pay, received from a person said to be the holder, can the maker have an action against the bank?

(3) If the bank pays, for want of a proper order from maker, can the holder in good faith have an action against the bank?

Answer.—The countermand of payment referred to in section 74 of the Bills of Exchange Act is clearly a countermand by the customer. If the bank refuses payment on the notification of someone not the customer, and if it should turn out that the person presenting the cheque was a holder in due course, the maker would have an action against the

bank for refusing payment of his cheque, as the maker would be liable upon the cheque to the holder in due course. If the bank pays the cheque to a holder in due course, the original holder would have no action against the bank, as the cheque has, as between him and the subsequent holder in due course, ceased to be his property. If, however, the bank paid to a person who was not a holder in due course, under such circumstances as would disentitle it to say that the cheque was paid in good faith, then the original holder of the cheque could claim from the bank its value in an action of trover for conversion of the cheque.

The receipt of such a notice from a person claiming to be the holder would undoubtedly put the bank upon enquiry as to the rights of the person presenting the cheque, and the bank should satisfy itself that he is really a holder in due course.

Stop Payment of a Marked Cheque.

Question 199.—(1) The successful tenderer for a contract being let by the town of B, discovers after being awarded the contract, that he has made a mistake in his calculations. He asks to have his tender cancelled and the accompanying marked cheque returned, which the town refuses to do. Can he stop payment of the cheque?

(2) The town of B bring to a local bank the above mentioned cheque which is drawn on a bank in another place, and ask to have it cashed without recourse against the town. Would the bank be safe in cashing it?

Answer.—(1) A customer cannot stop payment of a marked cheque which has reached the hands of the payee, without the payee's consent. If the customer chooses he can bring proceedings against the town for the return of the cheque, and can obtain, if the Court will grant it, an injunction preventing their dealing with it and preventing the bank from paying it, but short of restraint by the Court we do not see on what ground the bank could refuse to pay the cheque.

(2) A bank might be safe in negotiating a marked cheque without recourse to the payee if they knew of nothing affecting the payee's title to the cheque, or his right to negotiate the same. The proposal, however, would be so unusual it might almost constitute notice that something was wrong, and we think it would be unwise to adopt such a course.

STOP PAYMENT OF CHEQUE—CHEQUE CERTIFIED BY DRAWEE BANK THROUGH OVERSIGHT — CERTIFICATION CANCELLED.

Question 200.—The bank on which a cheque, payment of which has been stopped, is drawn, receives it by mail from an outside point. Through oversight the cheque is marked and stamped paid. The error is discovered before three o'clock and the cheque sent to protest. The teller marks the cheque "cancelled in error," but the ledger-keeper forgets to remove his initials. Do the initials of the ledger-keeper commit the bank to pay the cheque?

Answer.—We think not. As the bank did not as a matter of fact honour the cheque, and as the initials were left on in error, the holder could not claim any benefit from such an error.

TREATMENT OF CHEQUES WHEN PAYMENT OF SAME HAS BEEN STOPPED.

Question 201.—John Johnson gives his cheque to James Peterson, and subsequently instructs his bank to stop payment. Cheque is presented by mail by a second endorser, Peter Smith. The bank writes, "payment stopped," on face of cheque in red ink. Since cheque was the property of Peter Smith, was the bank justified in mutilating it?

Answer.—It would have been more discreet for the bank to have pencilled the reason for refusal on the back of the cheque as usual. Nevertheless, the holder's rights are in no way prejudiced by the so-called mutilation.

The difficulty would not have arisen had the cheque been protested.

STOP PAYMENT OF A CHEQUE — SUBSEQUENT NEGOTIATION BY THIRD PARTY IN GOOD FAITH.

Question 202.—A issues a cheque payable to B or order, and subsequently stops payment of same. The cheque is negotiated to C, who does not know of payment having been stopped.

The cheque having been dishonoured, is C entitled to recover the amount from A, the drawer of the cheque?

Answer.—The holder's position in this case is precisely the same as that of the holder of any negotiable bill of exchange. If notice of dishonour has been given he can sue both the drawer and the endorser.

DISHONOURED DRAFT—RIGHT OF A BANKER TO CHARGE A PORTION OF THE AMOUNT TO THE DRAWER'S "PRIVATE ACCOUNT," WHERE THERE ARE NOT SUFFICIENT FUNDS IN HIS BUSINESS ACCOUNT.

Question 203.—A customer has two current accounts (one an ordinary business account, the other entitled "private account"). A cheque on an outside point deposited by him, has been dishonoured, protested, returned and charged back to his account, but there are not sufficient funds to pay it all. Is the bank legally justified in charging his "private account" with the balance of the item, or with as much of it as this account will permit? No promise was made that his "private account" should not be charged back if necessary (as well as the other account), with any returned dishonoured item.

Answer.—If the two accounts are strictly as described, that is, both accounts of the same party, representing money held in the same right—that is, not as trustee, etc., there is no question that the bank would have a right to set off against any balance in either account an overdraft in the other. This is in effect what is proposed.

Telegraphic Request to Hold Funds for a Cheque.

Question 204.—Do you consider it safe for a bank to hold funds which are at a customer's credit on a telegraphic request from another bank which is about to cash the customer's cheque? What would be the result if another cheque would be dishonoured before the first cheque was presented? What if the cheque for which the funds were held proved to be forged, or if payment were countermanded by the drawer?

Answer.—This is one of the practices which as a practice is found to work very well, but in theory is quite indefensible. A bank cannot accept or pay a cheque until it is actually presented, and notwithstanding such a telegraphic request or promise, the money is still at the customer's credit, and he has a right to say what shall be done with it. The refusal of another cheque under the circumstances mentioned might therefore expose the bank to a claim by the customer for damages, and this would be the result whether the cheque telegraphed about were forged or not, or if it were subsequently countermanded.

The Acceptance or Certification of Cheques.

Question 205.—A bank refuses to put an acceptance stamp over its ledger-keeper's initials certifying cheques and bills domiciled with it. (1) Is there any way in which we could compel them to do so, and (2) are we justified in accepting these cheques and bills as certified?

Answer.—A bank cannot be compelled to accept or certify cheques or bills, and therefore cannot be compelled to mark them in any way. Their legal obligation is simply to pay the money on demand, if the customer has placed them in funds for the purpose. The marking of cheques is a practice which has grown up as a matter of convenience between banks. We think that the ledger-keeper's initials are binding upon the bank, as a representation on its part that it holds the funds, but the extent to which its obligation goes has not yet been determined. If a formal acceptance stamp

is put on the cheque by the proper officer, we are inclined to think that it makes the bank an acceptor under the ordinary rules respecting bills of exchange.

(2) If you are satisfied that the initials are those of the ledger-keeper of the bank, we think you are justified in accepting such a certification.

Cheque to Drawer's Order. Right of Bank to Have it Endorsed.

Question 206.—A person presents a cheque, which he has himself drawn to his own order, to the bank on which it is drawn. Is he obliged to endorse it?

Answer.—For the reasons discussed at length in our reply to Question 180, we are of opinion that the bank is entitled to have the cheque endorsed.

Cheque Torn across and Pasted together.

Question 207.—Would a bank be justified in refusing payment of a cheque which had been torn across and pasted together?

Answer.—Yes. Unless perfectly satisfied as to its *bona fides* because of the channel through which it comes, it should only pay the cheque after confirmation by the drawer. The openings for fraud which any other policy would afford are too obvious to need discussion.

Undated and Post-dated Cheques.

Question 208.—Are undated and post-dated cheques negotiable?

Answer.—They are not invalidated by the absence of a date or by being post-dated; and are therefore on the same footing as to negotiability as other cheques. (Secs. 4 (a) and 13 (2) Bills of Exchange Act.)

CHEQUE UNMARKED, RECEIVED ON DEPOSIT BY THE BANK ON WHICH IT IS DRAWN—RIGHT TO RECOVER ON FINDING THAT THERE ARE NOT FUNDS.

Question 209.—A bank receives on deposit from another bank a cheque drawn upon it by a customer and enters the deposit at the credit of the other bank in the latter's pass-book. After entering the credit, but before three o'clock of the same day, the paying bank discovers that the cheque is not good and wishes to charge it back to the depositing bank. Has it the right to rescind the credit which has been given? The transaction takes place at a small office where the teller, who took the deposit, should have known or been able to ascertain at once the state of the customer's account?

Would the position be different in a large office where the teller, who received the deposit and passes the cheque, might not know for some time whether or not there were funds for it?

Answer.—The case of a cheque drawn on the same bank in which it is deposited differs from the case of a cheque drawn on another bank. In the one case the holder of the cheque when presenting it is entitled to know at once whether it is good or not, and his recourse against the drawer and endorser depends upon the cheque being dishonoured on presentation and upon notice of the dishonour being properly given. If the presentation for deposit can be considered a presentation for payment (and we think it should be so considered), the question arises, has the cheque been honoured by credit for its being given in the depositor's book? If so, then the holder has lost his remedy against the drawer and endorser, as he cannot properly notify them that the cheque has been dishonoured, and the bank cannot, after changing his position in this way, repudiate the credit. *Prima facie* this would, we think, be the position, and the principles explained in the River Platte Bank v. Bank of Liverpool case would apply. We think, however, that if it were clearly shown that by universal custom, or by agreement with the

customer, the presentation for deposit entitled the bank, as the drawee of the cheque, to take a reasonable time to consider whether to pay the cheque or not, and in the meantime to credit the amount in the depositor's book, then the bank would not be prevented from subsequently, and within the reasonable time, refusing payment, as the entry in the book would not, in such a case, be treated as honouring the cheque in a way to prevent the holder from giving notice of dishonour if payment were afterwards refused.

Cheque Issued with Blank Space before or after the Amount.

Question 210.—Referring to the report of the judgment in Bank of Hamilton v. the Imperial Bank, in the January issue of your Journal, would not a ledger-keeper be justified in ruling a line in the unused space where the amount is written in a cheque?

Answer.—Yes, and we think it would be in the interest of the bank he should do so.

Note not Payable to "Order" or "Bearer."

Question 211.—A note is drawn payable to "John Jones" simply, the words "order" for "bearer" being omitted. Is such a note negotiable? Does the same rule apply to a cheque?

Answer.—A bill or cheque so drawn is payable to "order" (sub-sec. 4, sec. 9, Bills of Exchange Act).

Individual Carrying on Business under a Trade Name. Signature on Cheques, Etc.

Question 212.—A person carries on business under the firm name of "The Quebec Lumber Company," and deposits a declaration to that effect in the prothonotary's office in accordance with law. He uses this name in signing cheques and other documents, but without adding his own name thereto.

Is such a signature valid, and would a bank handling the bills or the parties accepting them, incur any risk?

Answer.—A person carrying on business under a quasi-corporate name, such as the above, binds himself when he signs his trade name, just as though he wrote his own name. The only question involved is one of proof: that is, that the name "the Quebec Lumber Company," was written by the person who carries on business in that name.

But although the signature without any addition is valid, it is to be remembered that in the matter of endorsing items for deposit in other banks, it would be contrary to the "Rules and Conventions respecting Endorsements," which require such an endorsement to bear in addition the name of some person, with an indication of the authority by which he signs. In the absence of this name the bank receiving the cheque would under the rules be entitled to a guarantee of the endorsement.

Clearing House Rules—Returned Items.

Question 213.—Has not the paying bank until three o'clock the legal right to refuse to pay cheque presented through the clearing house, even though there be a local rule limiting the time to twelve o'clock?

Answer.—The legal right of a bank to refuse payment of an item presented through the clearing house is not affected by the rules of the clearing house, but such an item cannot be returned through the clearing house unless notice of the objection is given before twelve o'clock.

Clearing Houses.

Question 214.—(1) Why have no clearing houses been established at Quebec and Ottawa?*

(2) Would it not be advisable to put them in operation wherever there are five banks or more?

Answer.—(1) We think clearing houses would unquestionably be found to serve a very useful purpose at the points

* *Since established. J.K.*

mentioned; but for an answer to the enquiry why they have not been established we must refer our correspondent to the local banks concerned.

(2) We think that in any place where there are (say) seven banks established, a clearing house would economize time and labour greatly. They might with advantage be established where the number is less, but the economy would not be so marked, nor the gain very great. We see no difficulty in establishing them in places where settlements are not made by legal tenders. The rules of the Hamilton clearing house on the point of settlement are suited to places where balances are settled by drafts on Montreal or other central points.

Clearing House Systems.

Question 215.—Every clearing bank in London, England, keeps a clearing account with the Bank of England, where is also kept an account known as the "Clearing Bankers' Account." Daily settlements are made by crediting or debiting this account as balances happen to be in favour of or against each bank, without the employment of coin or currency. Why has this simple system not been introduced in Canada in preference to the more cumbrous method of settlement by exchange of "legals"?

Answer.—The immediate settlement in London is made by a cheque or voucher, representing a transfer from one account to another, but that does not cover all the work involved, for the clearing banks probably make deposits in and withdrawals from the Bank of England daily. Settlement under our clearing system involves only one deposit or one withdrawal daily, and that in large notes good only between banks, so that the system cannot properly be called "cumbrous" even as compared with London.

The London system has grown out of the unique position of the Bank of England, and could probably not be copied anywhere else in the world. Canadian banks would not generally be likely to keep their reserves in the form of a

deposit with another bank, even if a bank willing to accept such deposits should be found.

Liability of Collecting Agent—Express Company.

Question 216.—A bank at Creditburg sent a promissory note for collection addressed to "The Express Company, Duntown." The agent of the express company collected the note and remitted proceeds in error to an endorser on the note, instead of to the bank, which endorser made an assignment a few days afterwards.

Are the express company liable? Can they escape liability under the plea that the bank sent the note direct to the express company at Duntown instead of through the local agent at Creditburg?

Or is the agent only personally liable?

Answer.—Assuming that there were no instructions in the communication sent with the note which would justify the remittance of the proceeds to the endorser, the express company or the agent would be liable to the owner of the note. As to which is liable would depend on the extent to which the express agent is the agent of the company. It would seem to us that as the express company hold him out as their agent for their ordinary business, which includes the collection of money, they would be liable. They might say that a collection sent to him by mail from another point and not through the local agent, is not within the usual scope of their regular business, but we doubt very much if that affects the question of agency. He collected the money on their behalf, and the charge for the service was no doubt credited to them.

Collections—Responsibility of Banks for the Selection of Collecting Agents.

Question 217.—A bank receives on deposit from one of its customers a sight draft which is sent for collection to a branch of La Banque Ville Marie. The latter remit by draft on the head office, but before the draft can be presented the

institution closed its doors. Can the first bank look to its customer for the amount?

Answer.—The cases make it clear that unless the bank sent the bill to the Banque Ville Marie at the request of the depositor, they are responsible for the consequences of sending it there.

"Cut" Collection Rates between Banks.

Question 218.—I recently received two letters from a branch of a certain Canadian bank offering to make collections in the town and vicinity (where it had recently opened), first at 1-10 of 1 per cent., minimum 10c., and later at 1-16, minimum, 8c., evidently desiring to take this class of business away from a bank which had been established at this point for many years. I replied that we were quite satisfied with our present arrangements for collecting, and had no intentions of making a change.

I would be glad to have your opinion as to the propriety of the action of a bank in cutting rates in this manner.

Answer.—The members of the committee are unanimously of opinion that competition of the kind referred to is most inadvisable, and that banks should not help it on by accepting "cut" rates. The question is, however, one respecting which we could scarcely do more than express the views of the members of the committee unofficially.

Collections.—A Case of Negligence on Part of Collecting Bank.

Question 219.—A bank on presenting a draft for acceptance is tendered a post-dated cheque for the amount. This it holds, together with the unaccepted draft, until maturity, when the cheque is dishonoured. The bank having failed to notify the drawer and endorsers of the draft that it had not been accepted, does it lose its right of recourse against said drawer or endorsers?

Answer.—We think the position is that the collecting bank has allowed all the parties on the bill to be discharged, and that it has no recourse except to make the best it can out of the dishonoured cheque.

Collections Sent to Private Bankers.

Question 220.—A current account customer brings in a note for collection, made payable at a private banker's office in a place where there is no chartered bank. He is told that the collection will only be forwarded to the private banker's at his own risk, and the following notice had been placed in his pass-book when his account was opened, viz.:

> All bills, notes and other securities left with the bank for collection will be collected at the risk and cost of the parties leaving them, the bank only holding itself responsible for the amount actually received by it, and not for any omission, informality or mistake occurring in collecting them.

When the note matures a partial payment is stated to have been made on the note to the private banker who fails to remit the money, and also fails financially, suspending payment the day after the payment was made.

(1) Can the customer bring suit against the bank and recover the amount paid on the note, but not remitted by the private banker?

(2) Would not the customer have a chance to recover the amount from the maker of the note? In making the note payable at this private banker's office, did he by so doing appoint him the collecting agent?

The note was returned to the customer, and of course no charge was made by the bank.

Answer.—(1) If the understanding with the customer was clearly that stated, then he must be taken to have authorized the employment of the private banker as his agent to make the collection, and must bear any loss that may result therefrom. On proof of the conditions upon which

the collection was received the customer's suit against the bank must fail.

(2) The customer has no remedy against the maker of the note. Having authorized the employment of the private banker to collect the note, anything paid the latter by the maker is in effect payment to the customer.

The fact that the note was made payable at the private banker's office is immaterial. The liability is placed upon the customer by the parole agreement, etc., at the time the note was handed in.

We might add that the law is quite clear that where a bank selects a collecting agent of its own accord, without asking the customer for instructions, or putting on him the risks involved, it is responsible for the agent's acts.

Where a customer discounts with a bank bills which can only be collected by sending them to a private banker, it might seem reasonable that, as the sending of them to such agent is a course forced upon the bank by its customer's manner of doing business, he should be responsible, but the law is clearly otherwise, and most banks, we think, now take the precaution of requiring customers who discount or lodge for collection bills payable at such points, to give a letter of indemnity on the lines suggested by the notice clipped from the pass-book.

Collections Sent to Private Bankers.

Question 221.—A bill for collection is sent by a bank to a private banker, who is a customer of the bank, there being no chartered bank in the place where the bill is payable. The cheque received from the private banker in payment is dishonoured. On whom must the loss fall?

Answer.—Unless there was an understanding with the customer that the cheque should be sent to the collecting agent employed, of such a character as to make it clear that he had approved of the selection of the agent, the bank must bear the loss. This point was fully dealt with in our reply to Question 220.

Keys and Combinations Lodged with another Bank.

Question 222.—The manager and accountant of a bank hand to another bank in the same city a sealed package represented to contain duplicate keys and combinations of all the locks in the office, with the request that they be held in safe-keeping, and delivered only on the joint order of officials acting as manager and accountant respectively, who may be in charge at any time. In case of the absence or incapacity of manager or accountant or both, would the custodian be justified in delivering the package to other officials who might for the purpose claim to be acting? If so, would not either of the applicants be greatly assisted in obtaining fraudulent possession of keys or combinations?

Answer.—We think that the bank holding the package would only be justified in delivering the same strictly within the terms of the conditions on which it was lodged—that is "on the joint order of the officers acting as manager and accountant who may be in charge at any time." As to who should be considered to be acting in these capacities is a question of fact depending altogether on the circumstances of the particular case, and it would be impossible to express an opinion without knowing all the circumstances. If the officials claiming the package are, as a matter of fact, acting as manager and accountant, and in charge at the time, they are entitled to the parcel; if not, they are not entitled to it.

Signature of a Company without the Name of the Signing Officer.

Question 223.—Where a party trades under the name of a company, as for instance, "The Canadian Iron Company," is it sufficient for him to use the name of the company in his signature, without the addition of his own name?

Answer.—Legally such a signature is sufficient, but practically it is open to many objections.

Joint Stock Companies—Powers of Officers.

Question 224.—The shareholders of a company incorporated in Ontario pass a by-law authorizing the directors

to appoint a president and other officers, and declaring that the president is to be the manager of the company, with power "to exercise all such powers of the company as are not required by law to be exercised by the directors or by the company in general meeting." Would this by-law empower the president to sign cheques, acceptances, etc., on behalf of the company?

Answer.—We think that the by-law is quite sufficient for the purpose named.

Press Copies v. Carbon Copies.

Question 225.—The practice of filing carbon copies of typewritten letters instead of copying them in letter books seems to be growing. I would like the opinion of other bankers as to the convenience and safety of the practice. The use of the copy in evidence is a matter to be considered. The letter press copy, owing to the order in which it comes in the letter book, presents in itself evidence of its genuineness, while a carbon copy might easily be fabricated.

Answer.—There are no degrees of secondary evidence—a letter press copy and a carbon copy stand in precisely the same position in regard to admissibility as evidence, and if the loss of the original be proved or its non-production otherwise properly accounted for so as to lay the foundation for the admission of secondary evidence, the question would be simply one of fact, viz.: "is the carbon letter a copy of the original?" The same question would be involved if the letter press copy were offered. If the contest were upon the existence of the original or as to its date or when sent, etc., one can readily see that the letter press copy, appearing in its proper place, would in ordinary circumstances be a stronger piece of evidence than a carbon copy, but if the contest were as to the contents of the original neither the letter press copy nor the carbon copy would prove itself. Evidence would have to be given on this point, and if the contest were keen it might be easier to throw doubts upon the accuracy of the carbon copy than upon that of the other. Still the

question would be one of fact and in the majority of cases it would be as easy to prove the one as the other.

Currency of Canada Convertible.

Question 226.—Is the currency of Canada a convertible or an inconvertible one?

Can I take $1,000 in legal tender notes to the Receiver-General and demand gold?

Can I demand gold or legal tenders for bank notes if I present them at place of issue?

If I present them at a country branch, can I still insist on being paid in gold or legals?

Section 57 of the Bank Act provides for payment of $100 in legals when demanded, but I cannot find answers to the above in the Act.

Answer.—The currency of Canada is convertible. The Government will pay gold for legal tender notes when presented to the proper officer, and the banks are bound to pay gold or legal tenders for their notes when presented at the place of payment. Whether or not the bank is bound to redeem its notes in gold or legal tender at any country branch depends upon the terms of the note itself. In practice they are usually made payable at the head office only, and while the bank is bound to receive them in payment of debts at any office, it is only bound to redeem them at the place or places where they are made payable. There is a further provision as to the redemption agencies.

Section 57 of the Act does not touch this question. Its effect would appear to be merely to impose on banks the duty of paying up to $100 in legal tenders, and so far to deprive them of the right to meet their obligations in gold.

Par Value of Foreign Currencies.

Question 227.—Is there any recognized par value for francs and marks?

Answer.—The value of francs and marks is fixed by the Governor-General in Council, for customs purposes, at 19.3c. and 23.8c. respectively, but we doubt if this can be properly called a "par value." The value of a sovereign is fixed by section 2 of the Currency Act at $4.86 2-3, and of the American gold coin by section 7 at their full nominal value. The only way in which a value could be fixed for francs and marks which might be termed a par value would be a proclamation under the same section.

Days of Grace in England.

Question 228.—How many days of grace are allowed in England on bills drawn (a) at sight, (b) at three days' sight, (c) at sixty days' sight?

Answer.—A sight bill payable in England is not entitled to days of grace, but is payable on demand.

Bills drawn at three days or at sixty days' sight are entitled to three days' grace.

Debentures Held by a Bank as Collateral—Neglect of Bank to Present Coupons Promptly.

Question 229.—A bond with coupons attached is held by a bank as collateral security. They neglect to collect the coupons as they mature, and ultimately when the bond matures it is found to be uncollectible. The customer claims credit for the overdue coupons. Is the bank responsible?

Answer.—The relations between the bank and the customer are scarcely indicated with sufficient clearness to enable us to answer this question definitely. On the bare facts stated we should say that as the customer was not entitled to receive the coupons, but was bound to leave them or their proceeds with the bank as security, the duty of collecting them fell on the latter. If then, as a matter of fact, the coupons would have been paid if duly presented at maturity, the bank would be responsible for the loss caused by their non-presentation.

Debentures Issued without Coupons.

Question 230.—A trading company makes an issue of debentures, secured by mortgage, over all its property, to which debentures no coupons are attached. Apart from the question of the value of the property of the company, would such issue be looked upon as a desirable security for advances by a bank? If not, why not?

Answer.—It is not made quite clear whether the question has relation to the fact that the debentures are those of a trading company, or to the fact that no coupons are attached.

As to the former we do not think that the debentures of a trading company are good security for the bank, for the reason that they are usually extremely difficult to sell.

As to the point of their not having coupons for the interest, that might or might not be a serious objection. It would no doubt in any case impair their selling value, for people would in such case have to send the debentures every time they wished to collect the interest, and if they were payable at a distance from the place where the holder resided, this might be quite a serious item. We do not, however, see any other objection from this point of view.

Note Delivered without Endorsement.

Question 231.—(1) Is the maker of a note which is overdue protected in the payment of the same, to any one presenting it, upon having note delivered up to him without the endorsement of the payee?

(2) Can such possessor of a note (the note not having been endorsed over to him by payee, he could not, I take it, be considered the holder in law), be he Tom, Dick or Harry, enforce payment by suit against the maker without obtaining the payee's endorsement?

Answer.—The question involved in each case is whether the party in possession of the note is the owner of the claim which it represents. He might become so by an assignment

as well as by endorsement, but unless he is able to show a good title to the note, he has no right to collect it or to sue the maker, and if, as a matter of fact, he has not a good title, the maker would not be protected against the true owner if he paid the note.

Deposits between Banks at Points where there is no Clearing House.

Question 232.—Two banks at a point where there is no clearing house, exchange deposits before eleven o'clock each day. (1) Is it permissible for either to make a second deposit before three o'clock, or should second deposit, if allowed at all, be made before twelve o'clock? (2) In case a second deposit is made can the depositing bank, provided the balance is in their favour, demand a settlement on the same day?

Answer.—In the absence of any local agreement on the subject, either bank may make a second deposit at any time up to three o'clock and demand a settlement cheque. We believe, however, that it is the practice of banks at most points to make their deposits before a certain hour each morning, and we think it desirable that this practice should not be infringed.

Deposits for Benefit of a Minor.

Question 233.—What is the best way in which money can be deposited by a father to the credit of his son, age eleven?

If the father placed it in his own name in trust for the son, would that protect the money from his creditors?

Answer.—It seems clear from section 84 of the Bank Act that a bank may take a deposit for credit of such a lad, notwithstanding his age, and may repay it to him from time to time without the intervention of any guardian, etc. There is a limitation in amount affecting such deposits in the Province of Quebec.

If the money were deposited to the credit of the father in trust for the son, the protection from the father's creditors

would depend on whether the money was really the property of the son or not. If it were, the father's creditors could not touch it.

Deposit from Minor.

Question 234.—Referring to your answer to Question No. 233, you give the impression that there is a limit to the amount which may be received on deposits from minors as applying to Quebec Province only. I have been informed that the amount is limited to $500 all over the Dominion. If I am wrong kindly advise me.

Answer.—Section 84 of the Bank Act permits the amount of $500 to be held on deposit at any time from minors and others legally debarred from making contracts, when such deposits are not permitted by the law of the Province in which the deposit is made.

If the Provincial law does not restrict such transactions, the Bank Act does not.

Deposit in Name of A B, in Case of Death Payable to Creditors to Garnish the Moneys.

Question 235.—A B deposits money as follows: "A B for C D" but C D to have no power to draw. Can a debtor garnish this money for a private debt of A B?

Answer.—If the money, as a matter of fact, is A B's money, it can be garnished. If it is C D's money, of which A B is trustee only, it cannot be touched by A B's creditors.

Deposit in Name of A B, in Case of Death Payable to C D.

Question 236.—Is a deposit receipt payable to A B or in case of death to C D legal? Would C D in case of A B's death have a clear title to the amount irrespective of any will which A B might make?

Answer.—We think that as between the bank and C D, C D would be entitled to the amount on the death of A B. Of course, in point of fact as between A B and C D the money

might belong to one or other of them, or as between them and some stranger it might belong to such stranger. It would be open to the party really entitled in such case to advise the bank of his rights and claim the money, and in such event the safe course would seem to be for the bank, if possible, to pay the money into court or, failing that, to take interpleader proceedings.

ACCOUNTS IN NAMES OF "A B, SHERIFF," AND "C D, TRUST ACCOUNT"—RIGHT OF A BANK TO CHARGE THERETO PERSONAL ACCEPTANCES.

Question 237.—If a draft is accepted by A B and C D individually, A B having an account styled "A B, sheriff," and C D a trust account, neither of them having an individual account, is it necessary for A B to accept it "A B, sheriff" and "C D, trust account," before the drafts may be charged to their respective accounts?

Answer.—It would not be safe for the bank to apply to payment of a draft accepted by A B and C D individually, effects deposited as stated, at all events without further authority than appears upon the face of the acceptance which *prima facie* is not to be considered as drawn against either of the accounts mentioned.

DEPOSIT ACCOUNT "IN TRUST" — EXECUTOR'S RIGHT TO WITHDRAW FUNDS.

Question 238.—Where a client of a bank opens an account in his own name "in trust," and dies when the account is in funds, can his executor give a valid discharge to the bank by signing so and so "in trust" by his executor so and so?

Sub-section 2, section 84, Bank Act, does not state that a depositor's executor has this power; does it imply it?

Answer.—The fact that the testator was a trustee or that the account was in his name "in trust" does not alter the powers of the executor. The proper form that should sign, not the testator adding the words "in tru

Deposit in Name of Deceased Minor.

Question 239.—A minor (resident in Ontario) dies leaving a balance in savings bank. Can the father of such minor draw the money? What is the legal course to pursue?

Answer.—Money at credit of a deceased depositor who was a minor at the time of his death, can only be legally drawn by his administrators duly appointed. There may be cases where it would be reasonable to pay the amount to the parents, but such payments could only be made at the bank's risk. Under the present procedure in the Surrogate Court letters of administration for an estate of trifling amount can be obtained at a nominal charge, we believe $2.

Accounts in the Names of Minors.

Question 240.—(1) What is the Ontario law relating to money deposited by minors?

(2) Which would you advise—the opening of a savings bank account in the name of a minor, or in the name of a parent or guardian in trust for the minor?

Answer.—(1) There is no general law in Ontario respecting money deposited by minors, but under the terms of section 84 of the Bank Act, banks may receive deposits from minors, and repay them to the minors at any time. (See the section referred to, and note the limitation where a minor could not, except for the section, make deposits).

(2) Notwithstanding the authority given by the Act, we would think it prudent to take a deposit in the name of a parent or guardian in trust for a minor, rather than directly in the name of the minor. This, however, would apply only in cases where the minor is quite young.

Deposit in Name of Deceased Executor.

Question 241.—A bank issued a deposit receipt to John Jones, executor. John Jones is now dead. The deposit receipt is not mentioned in his will. Are his executors legally entitled to withdraw the money?

Answer.—The executors of a sole trustee or surviving trustee become the trustees in his place and consequently have authority to deal with the deposit which he held in his lifetime as trustee. As the deposit receipt mentioned was not the testator's own property, it would not, of course, be mentioned in his will.

Account in Name of "Estate of John Smith," the Latter Being still Living.

Question 242.—(1) Is it usual to open accounts in name of "Estate of John Smith" or "Succession of Jean Smith" while John Smith is living?

(2) If so opened by another, should he not show written authority to transact Smith's business?

Answer.—We may say that it is not customary to open accounts in this manner, although there is nothing to prevent anyone from conducting his own account in such fashion.

(2) The party operating an account in this style on behalf of someone else should, we think, be required to produce written authority.

Trust Deposits—Withdrawal by One of Two Trustees.

Question 243.—Are we to understand from sub-section 2, section 84, Bank Act, that a deposit in the names of two parties can be withdrawn by one of them? If one of the depositors died would not his legal representatives have to join with the survivor in order that the bank might properly pay over the money?

Answer.—The section quoted refers to trust deposits, and its terms would seem wide enough to protect the bank in paying such a trust deposit to one of two trustees. We have, however, hitherto expressed the view that it is not altogether wise to reply on this section of the Bank Act, and we do not think that it is the practice of the banks to accept a receipt of one trustee in such cases. If, however, one trustee is dead, it is quite clear that the surviving trustee has entire control, and that the legal representative has no rights, so far as the bank is concerned.

Account in Name of Two Executors.

Question 244.—An account stands in the name of two executors. Is it not legal, according to the Bank Act, for either alone to draw?

Answer.—If the circumstances connected with the deposit show that it consists of moneys held by two executors as such, probably either may draw, though it is customary and safer to require both signatures. But if there is an express understanding that both are to sign, or if such an understanding might be implied from the circumstances connected with the deposit, this would, of course, alter the case, as the provisions of any contract must be complied with by the bank.

The law in Ontario empowers any one executor to withdraw money standing at credit of a deceased depositor, but if money were deposited to the credit of the executors, it would be safer to require the signature of all. It is difficult to say what effect sec. 84 would have in such a case, but as in cashing a cheque drawn (*e.g.*), by one of two trustees the bank would take on itself the burden of disproving any claim set up by the other that there was an understanding that both should sign, it is clear that it would be taking a serious risk quite unnecessarily. Sub-section 2 of sec. 84 may be held to be confined to cases where, but for that section, the bank could not take the deposit at all.

Account in Name of "Job Smith, 'Sheriff.'"

Question 245.—Job Smith, sheriff, places a sum of money in current account in his name as sheriff, the money deposited being court funds. Smith is dismissed from office and a successor appointed. Would a bank be justified in paying Smith the amount on his cheque signed "Job Smith, sheriff"—he no longer holding office—or would an order from the court be necessary? Or again, could the bank pay his successor without incurring liability?

Answer.—Unless the bank has had some special arrangement with the sheriff, covering an intimation that the

money at his credit is official money payable to himself or to his successor in office, or unless there is some local statute which controls the matter, the deposit in question must be regarded as one which is repayable to Job Smith personally. Under ordinary circumstances, where an account is opened in the name of "Job Smith, sheriff," the word "sheriff" must be regarded as a mere description.

Deposit in Name of "A B, Sheriff," or "A B, Assignee."

Question 246.—A deposit account is opened in the name of "A B, sheriff," and another in the name of "A B, assignee." On A B's decease to whom are the moneys in the accounts payable?

Answer.—Moneys standing at the credit of "A B, sheriff," or "A B, assignee," can only be paid out on the cheques of his executors or administrators, unless there be some local statute otherwise providing.

Moneys Deposited in Trust—Right of Beneficial Owner to Control.

Question 247.—An account is opened in the following name, "John Smith, in trust for Springtime Fire Brigade." In accordance with the rules of the Fire Brigade, all cheques have to be countersigned by W. Brown, chief. Smith draws a cheque to his own order for the balance of the account without Brown's countersignature. Is the bank justified in refusing this cheque until countersigned? What is its position if it should pay it without Brown's signature?

Answer.—It is not apparent from the statement in what way or for what purpose the by-laws have been communicated to the bank, but it would seem clear that the facts justify the bank in refusing to pay without Brown's signature?

The bank's position if it pays the cheque without Brown's signature would depend on the circumstances. If it could be shown that the deposit was made and held upon the special contract that cheques upon it should bear Brown's signature as well as Smith's, we think it would be difficult for the

bank to escape liability for practically joining Smith in a breach of his trust. It seems needless to say that it is unwise to take a deposit without having it made quite plain on whose order it is to be repaid.

Trust Accounts.

Question 248.—(1) Is there any objection to opening an account in the following form: "Mary Brown, administratrix, John Jones, attorney," the power of attorney from Mary Brown to John Jones being duly lodged with the bank?

(2) If John Jones should draw a cheque for the balance of the above account, and deposit it to a new account as follows: "John Jones, in trust for Mary Brown, administratrix," would the bank be under any responsibility for permitting such a transfer?

(3) If Mary Brown should revoke the power of attorney referred to in Question 1, would that affect John Jones' right to draw against his trust account?

(4) Would the bank be justified in refusing to pay the amount at credit of the trust account to John Jones, if so instructed by Mary Brown?

Answer.—(1) The account in this form, although irregular, has nothing in it to which objection need be taken. We think it must be regarded as the account of Mary Brown, administratrix, with a statement that John Jones holds a power of attorney to draw cheques upon it.

(2) The transfer of the balance to the account of "John Jones, in trust," is one of those things for which the bank might or might not be liable. He had certainly full power to withdraw the money, and he also had power, without implicating the bank, in any way, to deposit money to a trust account; but we should think there is a danger in this case of the bank being held to be a party to any breach of trust that may be involved.

(3) The revocation of the power of attorney would not affect John Jones' right to draw cheques on his trust account.

(4) We think that where a bank has been made aware for whose benefit the trust fund is held, they could not without risk pay it out to the trustee against the instructions of the *cestui que trust*. But she could not demand payment from the bank. She must take legal proceedings in the usual way. The legal title to the money is in the trustee, and the bank could not, except at its own risk, act without his authority. Under Ontario practice it can relieve itself from any difficulty by paying the amount into court.

Deposit Receipts—Negotiability.

Question 249.—Are deposit receipts transferable by endorsement?

Answer.—The usual form of deposit receipt is, we think, a receipt for money, and an undertaking to "account" for it, and not an unqualified promise to pay it. A document reading "Received of ——— £ ——— to account for on demand" has been held not to be a promissory note; and other cases where the agreement was to "account" for money have been decided in the same way. We think therefore that a deposit receipt in the customary terms would not be transferable by endorsement in the same way as a note would be transferable.

Negotiability of Deposit Receipts.

Question 250.—Referring to my enquiry as to the negotiability of deposit receipts (Question 249), subjoined is a copy of the wording of the receipt which I had in mind:

> Received from J. Smith on deposit, for a period of not less than three months from this date, and subject thereafter to ten days' notice of repayment or withdrawal, the sum of one hundred dollars, to be accounted for upon surrender of this certificate to J. Smith with interest (until date of notice only) at the rate of three per cent.

Answer.—With regard to the receipt in the form submitted, we should not suppose that such a receipt would be

negotiable. It would only have that quality if it could be held to be a promissory note, and we think that under the rulings in the cases referred to in the reply to Question 249, the promise to "account" for the amount to J. Smith cannot be held to be an unconditional promise to pay to the holder of the receipt. For the same reason it is not transferable by endorsement, in the sense in which that word is used in the Bills of Exchange Act, but the claim which it represents may be transferred by a simple assignment endorsed on the document by the depositor.

The practical questions arising out of these points are as to the obligation of the bank holding the money to account for the same to an endorsee, or its rights if it should make payment to an endorsee.

A mere signature in blank is not in itself authority to the bank to pay the party holding the document, and it would probably not protect the paying bank if, as a matter of fact, the party receiving the money had no right to receive it. An endorsement in blank might, however, be a very important link in the chain of proof advanced by the party holding a deposit receipt so endorsed, in support of a claim that the money had been duly assigned to him. This does not affect the bank's right to refuse to recognize the assignment without further proof.

If the receipt is endorsed by the depositor "pay to C D or order," payment to C D would probably be good, as such an endorsement would doubtless be held to constitute C D the agent of the depositor to collect the money, and the depositor could not dispute what was done in consequence of his own act; but, for the reason mentioned below, it would be well to take the endorsee's receipt for the money as "on behalf of" the depositor.

If the receipt is presented for payment by another bank, bearing the endorsement of the depositor either in blank or with an order to pay to such bank, payment might, no doubt, be safely made to the bank presenting the receipt, but it would be well to require a receipt for the money in

which it is declared that the receiving bank is acting as an agent for the depositor, *e.g.*, "Received from —— on behalf of A B (the depositor) the amount of the within deposit receipt and interest." The object of this is to ensure that if there is any mistake in the matter the bank receiving the money will be liable either to the depositor, as for money received on his account, or to return the amount as paid under a mistake. It is to be noted that a guarantee of the endorsement does not cover this point; that merely protects against forgery, and does not guarantee that the bank has authority to collect the amount.

Deposit Receipts "not Transferable."

Question 251.—Would not the bank's responsibility as to the proper disposal of moneys held on deposit receipt be lessened if the words "not transferable" were omitted from such receipts?

Answer.—We think not. A deposit receipt as ordinarily worded, in which the bank indicates that the money "will be accounted for," is not transferable in the sense in which promissory notes are transferable. The addition of the words "not transferable" does not alter the effect of the form; it merely calls attention to its nature. On the other hand if the deposit receipt were so worded that it was in effect a promissory note, and so negotiable in the ordinary sense, the bank would be liable to any holder of the receipt to whom it might be negotiated, and would lose some advantages, as, for instance, the right to hold the funds against a debt of the depositor.

Deposit Receipts—Duty of Bank when Depositor Proves Loss or Destruction of Same.

Question 252.—I am advised by a leading solicitor here that a bank can be compelled to pay the amount of a lost deposit receipt without a bond of indemnity, on the ground that the deposit receipt, not being transferable, but payable only to the depositor, his receipt for the money is sufficient. Also that no provision is made in the contract as expressed in

the deposit receipt respecting a bond to be given in case of loss.

I should be glad to know what the counsel for the Association thinks on this point.

Answer.—A deposit receipt in the ordinary form is not negotiable and is a mere evidence of indebtedness by the bank to the depositor. The loss of the receipt may inconvenience the depositor in proving to the satisfaction of the bank that he is the person entitled to the payment of this indebtedness; but if he were able to establish his right to the deposit by other evidence, the bank would have to pay him. It would be no defence to an action by him against the bank to recover the amount of the deposit that he had been given a receipt not negotiable, which receipt was not forthcoming; and he could not be compelled to give a bond of indemnity before claiming payment. If there were any special terms in the deposit receipt which he would have to comply with before claiming payment of the deposit, he would of course have to comply with them as a matter of contract; but the legal position with respect to the effect of special terms would have to be considered in view of the exact terms and of the circumstances at the time.

If the receipt contained the usual phrase "fifteen days' notice of withdrawal to be given, and this receipt to be surrendered before payment is made," it would certainly be a condition of the contract that the receipt should be surrendered before payment can be demanded, and *prima facie* the bank would be justified in refusing payment until this condition had been performed; but we think that the condition is one which would be held to have been discharged if the circumstances rendered it impossible of performance as a matter of fact, *e.g.*, if the receipt had been burnt or otherwise destroyed. The bank would in such a case be acting unreasonably if it refused to accept a bond of indemnity and pay over the money, and if in an action brought by the depositor he proved the destruction of the receipt, the court would in all probability order the bank to pay the costs of the suit.

DEPOSIT WITH PRIVATE BANKER GUARANTEED BY A BANK.

Question 253.—Does the guarantee of a deposit receipt of, or deposit account with, a private banker come within the powers of a chartered bank? Can a branch manager give such a guarantee, and would he be personally liable if the bank were held not to be liable?

Answer.—A guarantee of this kind is probably within the scope of the bank's powers, and binding on it if given for a proper consideration. The right of a branch manager to bind the bank by such a guarantee depends on the circumstances; and the facts would have to be carefully ascertained before an opinion could be expressed. The case would, however, be so unusual and open to objection, that the presumption would be against his authority.

If the bank proved not to be bound by his act, he would, if the guarantee was not in itself *ultra vires* of the bank, be responsible to the creditor for any damages sustained through relying on his implied warranty that he had authority to bind the bank. If, however, the guarantee were held to be *ultra vires*, then the manager would not be responsible.

The power of a bank to enter into a guarantee will depend upon the nature of the transaction. If the transaction be one which "appertains to the business of banking" within the meaning of section 64 of the Bank Act, it would be within the bank's powers.

It was held by the court in Montreal that a bank was not authorized to enter into a contract of suretyship guaranteeing the payment by a customer of the hire of a steamship under a charter party. Johansen v. Chaplin.

DEPOSIT—WITHDRAWAL OF SAME ON LEGAL HOLIDAY.

Question 254.—A gives his cheque to B in payment of an indebtedness, on the evening preceding a legal bank holiday. The bank remains open for the transaction of business on the holiday, when A withdraws the balance at his credit, thus cutting the holder of the cheque out of his money. Has the holder of the cheque any recourse against the bank?

His plea would be that he naturally assumed that the bank was not open on the holiday and held his cheque until the first business day thereafter, when he found the funds had been withdrawn.

Answer.—A bank is under no obligation whatever to the payees or holders of unmarked cheques. There is nothing to hinder the bank making payments to its customers outside of the regular business hours, whether on a legal holiday or not, and its sole obligation is to pay its customers' cheques when presented, if it then has funds in hand to meet them.

RIGHT OF A BANK TO PAY AT A BRANCH IN NOVA SCOTIA A DEPOSIT RECEIVED AT A BRANCH IN NEW BRUNSWICK, UNDER LETTERS OF PROBATE ISSUED TO THE DEPOSITORS IN NOVA SCOTIA.

Question 255.—A resident of New Brunswick, having a deposit in a bank in that province, moves temporarily to Nova Scotia (where he also owns personal property), and dies there. His executor obtains letters of probate in Nova Scotia, and applies for payment of the deposit in New Brunswick without proving the will in that province. The deposit exceeds $500.

(1) Would the bank be justified in making payment, and

(2) Would it have any protection under sub-section 3 of section 84 of the Bank Act?

Answer.—(1) On the general principle that a creditor may seek his debtor and pay him wherever he can find him we think a bank holding a deposit at a branch in New Brunswick, may, through one of its branches in Nova Scotia, pay the executor of the depositor, who presents letters of probate from the courts in Nova Scotia.

(2) The case does not come under section 84, seeing that the deposit is over $500.

DECEASED DEPOSITOR—LETTERS OF ADMINISTRATION—THE BANK ACT.

Question 256.—With reference to section 84 of the Bank Act, as amended by section 20 (3) of the amending Act of

1900, where a deceased depositor has more than $500 at his credit, and an administrator produces properly issued letters of administration to the estate and deposits with the bank a copy thereof as provided in such sub-section, what further enquiries must the bank make to be safe in paying over the money?

Answer.—We might point out that sub-section 3 is applicable where the will has been proven or letters of administration issued in a country other than that in which the deposit has been made. In the absence of this provision an administrator claiming, for instance, under English letters of administration, has no right whatever to demand payment of a deposit made in Canada. Where the amount exceeds $500 he must take out letters of administration in the Canadian province where the debt is due. The amendment empowers a bank to make payment where the total deposited does not exceed $500 on the letters granted outside of the province.

DEPOSITOR—WHEN DECEASED.

Question 257.—A married woman who has some money at her credit, believed to be held by her for a church society, dies, leaving a husband and minor children. The society claims the money. What should the bank do? Would it be liable to the children if the money were paid to the society?

Answer.—If it is quite clear that the money was in fact held by the deceased in trust for the society, there would be no risk in paying it to the society. A bond of indemnity should be taken, and the husband's admission of the society's rights. It would be well also to have a statutory declaration from some other person who knows the facts. The children could only get at the matter by procuring letters of administration of the estate. The administrator would undoubtedly have control of the deposit, but he would be bound under the conditions mentioned to pay it over to the society; so that the children would gain nothing.

DEPOSITOR OPERATING A BUSINESS ACCOUNT AND PERSONAL ONE—RIGHT OF BANK TO SET OFF.

Question 258.—John Smith, merchant, opens a business account in his own name with the bank, and also another account subsequently, called "personal account." The first mentioned account is overdrawn while there are funds at credit of the latter. Can the bank retain sufficient funds from the credit balance to cover his liability on the overdraft? Would the recent decision in the case of Bank of British North America v. Richards & Riley, have any bearing on such a case?

Answer.—In this case the balance in one account is due to John Smith, and the balance in the other due by him. The bank therefore has a right to set off one against the other.

We do not think the British Columbia judgment has any bearing when the facts are as in this case.

RIGHT OF A BANK TO HOLD FUNDS AT CREDIT OF A DECEASED DEPOSITOR AGAINST UNMATURED OBLIGATIONS OF THE LATTER.

Question 259.—(1) A bank's customer at his death has a deposit in his own name, believed to be his own money. The bank holds unmatured paper on which he is a promissor or endorser. Can the bank hold the money until this paper has matured and then charge the same against his account? How if the estate is insolvent?

(2) How would it be if it were shown that although the money stood in his own name, it was really trust money?

Answer.—(1) The bank could not hold the money if an executor or administrator duly appointed should bring suit for the amount before the bills mature, but would be entitled to set off any bills maturing before action brought. We think the same result would follow if the estate were insolvent.

(2) The fact that the money was trust money, if not known to the bank, would not affect the right set-off. (See

Union Bank of Australia v. Murray Aynsley in the Journal for April, 1899.)

REFUSAL TO PAY MONEY TO DEPOSITOR UNDER INFLUENCE OF LIQUOR.

Question 260.—Can a depositor under the influence of liquor legally draw his money out of his savings bank account?

Has such a depositor any ground for action against the bank for refusing to give the money?

Answer.—This is a very difficult question to answer. If a depositor were so much under the influence of liquor as to be quite incapable of understanding what he was doing, the bank would probably not be discharged by his signature to a receipt for money paid to him in that condition. If, however, he was but slightly under the influence, and quite sensible of what he was doing, the bank could not refuse.

Whether the depositor would have a ground of action against the bank for refusing to give the money would depend entirely upon the above points. If the bank was justified in refusing because of his unfitness to transact business, he would have no claim. If, however, they made the mistake of refusing when, notwithstanding his being under the influence of liquor, he was quite capable of transacting business, the bank would probably be liable for damages.

DIVIDENDS—RIGHT OF DIRECTORS TO PAY SAME.

Question 261.—A loan company shows among its assets $5,000 for costs of charter, and $29,200 for organization expenses, the latter having been increased somewhat during the year. Would the directors be justified, in the face of this, in paying a dividend to the shareholders? Their assets do not much exceed $200,000.

Answer.—The right of the directors to pay a dividend depends upon the state of the profits. A dividend cannot lawfully be paid which would impair the capital, or while the company is insolvent, but if there be profits on hand

they can be used in payment of a dividend. We think there is nothing in the conditions mentioned to prevent the directors from lawfully paying a dividend; the expediency of it is another question.

Business Transacted by Banks for the Dominion Government.

Question 262—Under the new regulations of the Post Office Department, we receive a cheque from the postmaster daily to take up the orders which have been cashed by the bank during the day. This cheque we have to remit daily to Ottawa. In a bank with 20 to 25 branches, apart from the labour involved, this would mean an addition to its postage charges of probably $100 for the year. Do you not think the government should make some allowance for this extra expense?

Answer.—We do not think that the banks should be expected to do work or incur expenditure in this way without remuneration.

Canadian Bank Notes and Dominion Notes—How Payable.

Question 263.—Can anyone presenting Canadian bank notes at place of issue demand gold for same up to any amount, and similarly with legal tender notes at the place of issue?

Answer.—Anyone holding the note of a Canadian bank may demand gold for the same at the place of issue. The bank may pay in gold or legal tenders, at its option, but should the party demand a certain proportion in legal tenders, the bank must comply therewith. See sec. 57 of the Bank Act.

The place of issue in most cases means the office of the bank at which the note purports to be issued. The practice of the banks in Canada now is almost altogether to domicile the notes at the head office. A bank is not bound to pay gold for such notes at its branch offices, but it must receive them at par in payment of any debts due it. See sec. 56 of the Act.

As regards legal tender notes, the government is bound to pay their face value in gold on demand at the place at which they are made payable.

Legal Tender Notes—Payment under Sec. 57 of the Bank Act.

Question 264.—Would you construe sec. 57 of the Bank Act to mean that a bank may pay sums up to $100 in ones, twos or fours only to a party who desires such a payment? Can it compel one who demands payment in legal tender of a claim for over $100 to take payment in ones, twos and fours, or must the bank pay in large legal tender notes or gold?

Answer.—The creditor must accept in payment of any obligation of the bank, no matter what the amount may be, anything that is a legal tender, but the creditor has the right to say that to the extent of $100 in any payment, the bank must pay him in one, two or four dollar Dominion notes. Except in so far as the bank is controlled by the latter provision, it is in the same position as any other debtor, and may at its option pay its obligations in small or large legal tender notes, or in such coin as is a legal tender under the Currency Act.

Married Women's Separate Estate.

Question 265.—Does a married woman who has a separate estate render that estate liable when she signs a note with her husband, or has she to sign another paper showing she intended to make her separate estate liable by her signature? (2) Does a married woman's name with that of her husband to a joint note, secure her dower to the bank discounting the note?

Answer.—(1) We are advised that no special declaration on the part of a married woman, that she intends to bind her separate estate, is necessary to make her undertaking binding thereon. If she has, as a matter of fact, separate estate at the time she signs a note, then her signature, either with her husband or in any other connection,

binds it. (2) The legal question affecting separate estate of married women and their dower rights in their husbands' lands, are among the most intricate and difficult, and upon them judges and lawyers are constantly differing. We find ourselves unable, therefore, to give a satisfactory reply to this query. It would probably be held that an inchoate right to dower in her husband's lands would not be separate estate sufficient to make the promise of a married woman enforcible if she had nothing else. The above refers only to the law in the Province of Ontario.

Dower Interest in Encumbered Lands.

Question 266.—What general rule should be adopted by a banker in estimating a customer's financial position, where the assets of such customer consist of encumbered real estate, taking into consideration the possibility of a claim for dower against such lands? To what extent would the security of a loan to such a customer be affected by his marrying subsequently to the making of the loan?

Answer.—The only general rule we can suggest is that it should be assumed that in the event of the bank wishing to come against the property, it would sell for much less than the valuation put upon it; that the encumbrances would be increased by interest, taxes, insurance premiums, etc.; and that against any surplus then remaining, there would be chargeable the dower interest, which might exhaust the whole surplus. What this may amount to in money may be estimated by taking the present value, calculated according to the usual tables, of a life annuity equal to one-third of the estimated income derivable from the full value of the property.

Upon marriage the property becomes charged with the dower interest subject only to existing mortgages.

Draft Accompanied by Bill of Lading for Payment—Surrender of Bill of Lading to Drawee to Enable Him to Examine Goods.

Question 267.—A bank holds a bill for collection, with bill of lading and certified invoice attached to be surrendered

on payment only, the goods being in bond. Is the bank justified in surrendering any of the documents for the purpose of enabling the drawees to examine the goods, and what risk would it run by so doing?

Answer.—The bank would be responsible to the owners of the bill for any injury or loss caused by its action. What this might be would depend altogether on the circumstances, but the bank by acting against its instructions, clearly takes on itself gratuitously whatever responsibility there may be.

DEMAND DRAFT WITH BILL OF LADING "FOR PAYMENT"—GOODS DELAYED IN TRANSIT.

Question 268.—A demand draft with bill of lading attached, to be held for payment, is received for collection. The goods, owing to delay in transit, will not arrive for three weeks, and the drawee refuses to pay until the goods arrive. No instructions have been given to hold the draft. Is the collecting bank excused from protesting it?

Answer.—The drawer would be discharged if the draft were held over without notice of dishonour being given him, and the collecting bank would be responsible for the bill.

DISHONOURED DRAFT.—RIGHT OF BANKER TO CHARGE A PORTION OF THE AMOUNT TO THE DRAWER'S "PRIVATE ACCOUNT" WHERE THERE ARE NOT SUFFICIENT FUNDS IN HIS BUSINESS ACCOUNT.

Question 269.—A customer has two current accounts (one an ordinary business account, the other entitled "private account"). A cheque on an outside point deposited by him, has been dishonoured, protested, returned, and charged back to his account, but there are not sufficient funds to pay it all. Is the bank legally justified in charging his "private account" with the balance of the item, or with as much of it as this account will permit? No promise was made that his "private account" should not be charged back if necessary (as well as the other account), with any returned dishonoured item.

Answer.—If the two accounts are strictly as described, that is, both accounts of the same party, representing money held in the same right, that is, not as trustee, etc., there is no question that the bank would have a right to set off against any balance in either account an overdraft in the other. This is in effect what is proposed.

Payment of Original Draft, after Duplicate has been Paid.

Question 270.—"A" who resides in Montreal buys a sola draft from his bankers on their Toronto branch, payable to "B" or order, and the draft was lost. The bank gives "A" a duplicate, which was duly paid in Toronto. If the original is subsequently presented for payment by an innocent holder would the bank be compelled to pay it?

Answer.—If the original draft reaches the bank properly endorsed it has to be paid. The circumstances call for a satisfactory indemnity before the duplicate is issued.

Draft Purchased from a Bank—Death of Purchaser before Delivery of Draft to Him.

Question 271.—A customer ordered and paid us the money for a draft on Hong Kong, which we obtained from our home office. Before delivery he died. What is our position in the matter? The draft is payable to a party in Hong Kong, and we understand that our customer was forwarding the amount on behalf of others.

Answer.—We do not see that you can do anything but hold the draft until someone has taken out letters of administration. It is quite likely that it would be safe to send the draft to the payee, but if for any reason the payee was not entitled to receive the draft you would by adopting such a course make yourselves responsible to the administrator.

Advice of Draft—Responsibility for Delay.

Question 272.—The B of H draws a draft on the B of T with advice, "pay to the order of John Jones the sum of

$\$\ldots$. and charge to our account." When the draft is presented the bank say they have not received an advice. How long must the customer keep it before he can enforce payment? Of course this does not apply to our drafts, but, as a matter of curiosity, we would like to know the law on this subject. Has there been any case decided under English law in this matter?

Answer.—If drawees refuse to pay on account of want of advice, holder has no recourse against drawee, but has immediate recourse against drawers.

SIGHT DRAFT LEFT WITH DRAWEE FOR 48 HOURS—DATE OF ACCEPTANCE.

Question 273.—If the holder of a sight draft should voluntarily leave it with the drawee for 48 hours for acceptance, and the drawee dates his acceptance on the last day on which he holds it, must the holder, in order to prevent the release of the drawer or previous endorsers, protest the draft?

Answer.—Yes; this would be a qualified acceptance, and should the drawee not make the necessary change of date the draft should be protested.

DRAFT, WITH BILL OF LADING ATTACHED, CASHED BY A BANK. HAS THE ACCEPTOR ANY RECOURSE AGAINST THE BANK IF THE BILL OF LADING SHOULD PROVE TO BE FORGED, OR IF THE GOODS ARE NOT AS ORDERED?

Question 274.—A bank has cashed a draft with bill of lading attached, the goods being shipped to order of the bank. Has the drawee any recourse against the bank if the goods are not as ordered, or in the event of shipping bill being a forgery? Does the bank in any way guarantee its genuineness?

Answer.—We think the bank assumes no responsibility to the drawee in such a case. He has been instructed by the drawer to pay so much money, which he has done. Even if it be said that the instructions were conditional on the documents attached being surrendered, this would involve nothing

further than that the bank should surrender the documents received from the drawer, whatever they may be. We think, however, that if the bank should negotiate the draft to another bank, it might be held responsible to the latter for the genuineness of the documents.

Draft with Bill of Lading Attached. Should Collecting Bank Permit Drawee to Examine Goods?

Question 275.—A draft is received for collection from a western bank with a bill of lading "to order" attached, instructions being "surrender bill of lading on payment." Drawee asks for permit to examine goods; can collecting bank grant it?

Answer.—We do not think the bank ought to interfere in such a point without the approval of the parties interested.

Draft with the Amount in Figures Different from that in Body.

Question 276.—The amount of a draft is expressed in words in the body as $150, the figures in the margin being $250, and is collected by a bank from the drawee at the latter amount. Some time afterwards the drawee discovers the mistake. Has he a right to require the bank to repay the $100?

Would the position of the parties be different (1) if the draft had been drawn on an agent of the drawee and he had received the $250, and (2) if the bank which collected the draft merely held it for collection, and not as the owner?

Answer.—The sum denoted by the words would be the amount payable. The payment in excess of $150 would be a payment made by reason of a mistake in fact, and if the bank were not a mere agent in the matter, the $100 would be recovered from the bank by the drawee.

If the bank were an agent, but the agency were not disclosed to the drawee, the same result would appear to follow, unless upon discovering the bank's principal the drawee chose to pursue the principal, instead of the agent.

If the bank were an agent acting for a disclosed principal, and the money received had been paid over to such principal, then the remedy of the drawee would appear to be against the principal and not against the bank.

Draft with Drawee's Address wrongly Given—Protest.

Question 277.—A draws upon B in Rossland by mistake; he should have drawn on him in Nelson, where he has a place of business and a residence. The item is sent forward to Rossland, subject to protest for non-acceptance. Draft is returned protested for non-acceptance. Inasmuch as the drawee has no place of business or residence in Rossland, and the draft was never presented to him, where are there any grounds for protest?

Answer.—It would seem clear that the bill must be regarded as dishonoured by non-acceptance, and it was the holder's duty, in view of the instructions quoted, to protest the bill. The matter works out in this way:

If after the exercise of reasonable diligence presentment cannot be made to the drawee or to some person authorized to accept or refuse acceptance on his behalf, presentment is excused (41, 2 b), and the bill may be treated as dishonoured by non-acceptance (41, 2). The holder of a bill dishonoured by non-acceptance may, if he thinks [illegible] protest the same (section 51). In this case the agent [illegible] holder was instructed to protest, and would not have acted in accordance with his duty if he had returned the bill without protest.

Wording of Sight Drafts.

Question 278.—A sight draft is made by "A" upon "B," drawn out payable to the order of..... bank, and cashed upon the security of the endorsement of "C." Is there any question regarding the wording of the draft adversely affecting such security, and, if so, upon what grounds?

Answer.—We consider the endorser is a guarantor of payment, and that in case of dishonour he could be effectively sued.

Endorsement Placed above Signature of the Preceding Endorser.

Question 279.—A signs a promissory note payable to B, B in order to get it discounted gets C to endorse. C's endorsement, however, is placed before B's on the note. Would C be liable to B as their endorsements stood?

Answer.—C would not be liable to B under such circumstances, no matter how the endorsements stood.

Forged Endorsements—A Complicated Case.

Question 280.—A Canadian bank sells a sterling draft on London to a customer. It is made payable to a person in a foreign country. The draft is cashed by a foreign bank for a person who forges the payee's endorsement, which bank in turn collects the amount through its London agent from the drawee in London.

Under these circumstances, has the purchaser of the draft any right of action against the bank which drew it? We presume not, but if so, what remedy has the owner of the draft?

Answer.—The purchaser has, as you assume, no right of action against the bank which drew the draft; he could only have such a right upon the bill as a dishonoured bill, which he could not have unless it were in his possession.

The only other parties who would be liable are:

(1) The foreign bank.

(2) The London bank to which the bill was sent by it. and

(3) The bank on which the bill was drawn.

The true owner of the draft, who might be either the purchaser or the payee (this depending on facts not stated in the question), would probably have a claim on the foreign bank which cashed it on the forged endorsement, but

his rights would be governed by the law of the country in which the transaction of cashing the draft took place. If this were like the English law, his claim on the foreign bank would be clear. He would also have a claim on the London bank which received the amount of the draft from the drawee bank, but their liability might be affected by the nature of their relations with the foreign bank. His claims on both of these arise from their having received and converted his property, and not out of any provision of law relating to bills.

The remaining question, namely, the owner's rights against the bank on which the bill was drawn, has not, so far as we are aware, been judicially decided. The question is very important and interesting, and we give the reasoning on both sides of it.

Section 24 of the Act in very clear terms declares that where a signature on a bill is forged, the forged signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery. If effect were given to these words in their unqualified form, we would say without hesitation that a person claiming to be the holder of a bill through a forged endorsement, even though he acquired the bill as a subsequent holder for value and without any notice of the forgery, could not discharge the acceptor by presenting the bills on the day of its maturity at the proper place and receiving payment from the acceptor and delivering the bill up to him. It must be borne in mind, however, that section 24 commences with the words "subject to the provisions of this Act."

"Holder in due course" is defined by section 29 to be a holder who has taken a bill complete and regular on the face of it, under conditions, of which one is, that he took the bill in good faith and for value, and that the time the bill was

negotiated to him he had no notice of any defect in the title of the person who negotiated it.

By section 2, the expression "holder" is defined to mean "the payee or endorsee of a bill who has possession of it, or the drawer thereof." Section 3 declares that the rights and powers of the holder of a bill are, among other things, (b) where he is the holder in due course he holds the bill free from any defect of title of prior parties; and (c) where his title is defective, if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill.

Section 55 declares that the endorser of a bill by endorsing it (b) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous endorsements; (c) is precluded from denying to his immediate or to a subsequent endorsee that the bill was, at the time of his endorsement, a valid and subsisting bill, and that he had then a good title thereto.

Section 59 provides that a bill is discharged by payment in due course by or on behalf of the drawee or acceptor, and that "payment in due course" means "payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective."

The arguments against the right of the drawee or acceptor to claim a discharge by payment to a person, a holder under a prior forged endorsement, are of course based upon section 24, which declares that a forged signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor, or to enforce payment thereof, can be acquired through or under that signature.

The arguments in favour of the right of the drawee or acceptor to claim a discharge by such payment are the following:

1. The statement in section 24 referred to is expressly declared to "subject to the provisions of this Act." The statement that no right to give a discharge is also qualified

by the words "unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or the want of authority."

2. Under section 55, the first endorsee after the forged endorsement is precluded from denying to his endorsers the genuineness of the forged endorsement, and is also precluded from denying that he then had a good title.

The definition of "holder" by section 2 would include this endorsee and he would become a holder in due course within the meaning of section 55, at all events with respect to his endorsers subsequent to the forged endorsement. He could bring an action on the bill itself against the prior endorsers. In order to hold the endorsers he would have to duly present the bill for payment, and if payment were refused he would have to protest the bill for non-payment, or the endorsers would be discharged. He therefore has the right to present the bill for payment, and to protest it. If he presented it for payment and it was paid, he could not of course protest it for non-payment. The effect, therefore, of payment would be to discharge the liability of the prior endorsers.

Section 59 expressly declares that a bill is discharged by payment in due course, and that "payment in due course" means "payment to the holder in good faith and without notice that his title is defective." The holder mentioned in section 59 is the holder defined by section 2, namely, "the endorsee of the bill who is in possession of it." It would be a remarkable result if payment under such circumstances would discharge the prior endorsers, and would not discharge the drawee or acceptor who actually pays. The reference to good faith in section 59 refers to the good faith in making the payment and not to good faith of the holder. A way in which the various provisions of the statute relating to this question can be reconciled is to confine the statement in section 24, that "no right to retain the bill or give discharge therefor can be acquired through or under the forged signature," to the case of a party claiming to be the holder through the forged signature only. If he claims to be the holder

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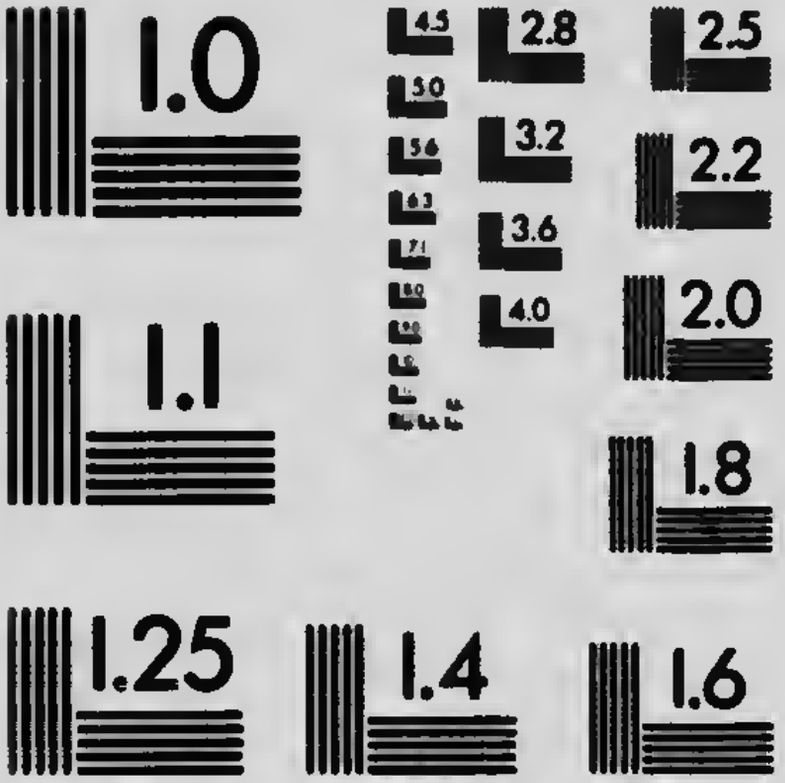

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through a genuine endorsement subsequent to the forgery, the other provisions of the Act mentioned would appear to give the right to present for payment and receive payment and give discharge to the drawee acceptor.

As above stated, we are not aware of any judicial decision on this very important question, but we think it probable that when it comes up for decision, the decision will be on the lines indicated.

Cheque to the Order of "John Smith, Collector of Customs," Endorsed by the Assistant or Acting Collector.

Question 281.—A cheque is payable to "John Smith, collector of customs." Are the following endorsements in order:

James Brown, Assistant Collector, or
William Jones, Acting Collector?

Answer.—The above endorsements are not in order, although it is quite likely that the circumstances would justify the bank in accepting them. The payment to the assistant or acting collector would not be valid if the cheque were given to John Smith as his personal property.

Endorsements by Rubber Stamp.

Question 282.—Now that stamped endorsements are becoming so much used by large business firms and others, would it not be as well to have some definite understandings regarding them? The question might arise as to whether they are legally valid discharges. There does not seem to be any provision made for them in the Bills of Exchange Act, and there is evidently some doubt regarding them, as they are frequently guaranteed by bankers when sending documents endorsed in this fashion, forward for collection. They seem to have come into use as a means of doing away with the old and more laborious way of writing the endorsements. Some banks are in the habit of taking letters from their customers admitting liability for such endorsements; but

how about the drawer (in the case of a cheque)? Is he to be satisfied by a stamped endorsement? Cannot he demand a written discharge? Of course cheques endorsed in this way always come to the payee bank through the medium of another bank, and are usually endorsed "for deposit only," but I have noticed cases, more especially in cheques coming from American institutions, where they have not had even that clause inserted.

Answer.—Stamped endorsements put on with the authority of the party are quite as binding as written endorsements; and although from the point of view of the difficulty of proving their genuineness, the practice has some objectionable features, it has become altogether too common and too useful to be now withstood. As far as the banks are concerned, what we have said in reply to Question No. 293 above, as to the liability of the bank to which items are paid, applies to this case also, and this affords protection for the bulk of such transactions. The bank with which the item is originally deposited by the party whose endorsement is put on by means of a stamp, would naturally protect itself by a written agreement with its customer, such as our correspondent refers to.

As to the rights of the drawer of the cheque to be satisfied with the endorsement, we do not think that he has any ground for complaint. At any rate in order to prove that the bank had no right to charge the cheque to his account, he would have to prove the invalidity of an endorsement.

Endorsement by Rubber Stamp.

Question 283.—Could a bank's customer repudiate the following or similar endorsement, made with a rubber stamp on a cheque taken in deposit, the name as well as the instructions being stamped:

"Pay to the order of Bank,
John Smith."

Answer.—If such an endorsement was unauthorized the customer might of course repudiate it, but we think he would

be bound to return the money which had been credited to him for the item on the strength of the unauthorized endorsement.

Stamped Endorsements.

Question 284.—John Smith carries on business under the name of the X Manufacturing Company. Is a stamped endorsement "X Manufacturing Company," without the proprietor's name, sufficient?

Answer.—Such an endorsement, if impressed by or with the authority of the proprietor of the business, would be quite legal, but it would not be within the rules adopted by the Association. See 3rd clause of Rule 2, which requires the name of the person to be added.

A Question of Endorsement.

Question 285.—During the writer's experience as accountant for ten years at different branches, including Winnipeg and Vancouver, it has been customary under Rules Respecting Endorsements Nos. 4 and 10 to call for a guarantee.

This custom we have never had questioned until a couple of days ago, when we asked for a guarantee for an item endorsed as follows: "Pay to the order of Bank for credit of ."

This endorsement was made by rubber stamp; the bank depositing the item refused to guarantee; we therefore took the item off their deposit slip; they based their stand on Rule 7 *re* endorsement and we held to Rules 4 and 10. According to Rule 7 a bill so endorsed "may be refused until restriction is removed."

We have discussed the point with one or two local bank managers and they take the same ground as we take.

The asking for a guarantee on these restrictive endorsements has been, we have always understood, with a view of leading the public to adopt an endorsement in accordance with the views of the Canadian Bankers' Association.

This endorsement was by rubber stamp, and if the question should arise, would this be a valid endorsement in accordance with the Bills of Exchange Act?

Answer.—An endorsement by rubber stamp if put on with the payee's authority is valid, and under sec. 35, subsec. 2 of the Bills of Exchange Act, the endorsee has the right to sue your bank for payment.

A guarantee by the depositing bank is not asked for in Montreal and is not we consider a legal necessity.

Endorsement by an Official on Behalf of a Company.

Question 286.—What is the legal difference, if any, affecting either the bank itself or its signing officers, between the following forms of signing drafts, receipts, orders, etc.: "The Bank of Canada, A. B., Manager or Director," and "For the Bank of Canada, A.B., Manager or Director?"

Answer.—We think there is no difference whatever, either affecting the bank or the signing officer, in the effect of the above modes of signature. Either would be held to indicate that A. B. was signing on behalf of the bank.

Endorsement by Partner in a Firm—Rule 2 of the Association.

Question 287.—A cheque in favour of Smith, Brown & Company is endorsed with a rubber stamp "Smith, Brown & Company, per ," one of the firm signing his name underneath. Should this endorsement be guaranteed under the rules of the Association?

Answer.—Under the last clause of Rule 2 the absence of words indicating the authority of the person signing makes the endorsement irregular, and therefore one which should be guaranteed. To meet the rule the partner endorsing in the usual manner should add such words as "one of the firm." It must be remembered, however, that the rule in question is largely for the protection of the depositing or presenting bank (see Rule 10); and if the paying bank knows as a matter of fact that the party endorsing is a member of the firm it would be hypercritical to require the guarantee.

Forged Endorsements.

Question 288.—Referring to article on forged and raised endorsements in the April, 1903, number of the Journal, "Cocks v. Masterman," what is the position of the acceptor who has paid a bill bearing forged endorsements. Could he be called upon to pay the money again to the last holder for value prior to the forged endorsement? If the acceptor had knowledge of forged endorsement on the bill and refused payment, to whom would the holder look for payment? Would the holder and the last endorser prior to the forged endorsement have equal rights against the acceptor?

Answer.—(1) He could be called upon to pay again to a valid holder.

(2) The holder would look to the party for whom he negotiated the bill. (*Vide* 60 & 61 Vict. ch. 10—Act respecting forged and unauthorized endorsements),

(3) The holder not being a holder in due course would have no rights against the acceptor.

Forged Endorsements—Claims Arising therefrom.

Question 289.—The drawee of a bill of exchange accepts and pays it. It is subsequently found that the signatures of the drawer and payee are forged. Can the drawer recover the money from the party who endorsed subsequently to the forged endorsement? Is not the bill discharged by payment of the liability, and the endorsers thereby discharged?

Would your opinion be affected by the following considerations: that the names of the drawer and endorser, which are forged on the bill, are those of employees of the drawee; and that the forged endorsement was totally unlike the genuine?

Answer.—The rights of the parties in the case are governed by section 24 as amended in 1897. The drawee has, under that amendment, a right, having paid the bill on a forged endorsement, to recover the money from the party to whom it was paid, or from an endorser, who endorsed the

bill subsequently to the forgery, provided the bill was paid by him in good faith and in the ordinary course of business, and provided that due notice is given. The circumstances connected with the drawee's knowledge of the endorser's signature would certainly be material in coming to a conclusion upon the question of whether the payment was or was not made in good faith and in the ordinary course of business, but it would require a very clear case to warrant the conclusion that the payment was not so made, merely because the drawee might have discovered the forgery by examining the signatures.

The rights above mentioned grow out of the payment on a forged endorsement, and the fact that the drawer's signature was forged also does not affect the question. But if the endorsement had been valid, the drawee could not reclaim the money, as he is precluded from denying the genuineness of the drawer's signature. See section 54.

Forged and Irregular Endorsements, Etc.

Question 290.—Sub-section 3 of the amended section 24 of the Bills of Exchange Act says in effect that the drawer shall have no right of action against drawee for the recovery back of the amount so paid or no defence to any claim made by the drawee for the amounts so paid, as the case may be, unless he gives notice in writing of such forgery to the drawee within one year after he has acquired notice of such forgery, etc.

(1) In the case of cheques on banks, who but the drawer himself is to give him notice of such forgery, or to determine the date on which he acquired such notice? Should not the fact of his signing to the bank a receipt of cheques, and a statement that he finds his account correct to a certain date, oblige him to give notice within a year of that date to give him right of action against the bank to recover on a forged cheque paid before that date?

(2) If I send Robert Waugh a notice by registered letter that I hold his note, if the note is a forgery is he bound to

notify me of this fact within a year from the date of my notice in order to escape liabilities on the note? If the bill is drawn say at three months from date, it would be long overdue before he need repudiate it.

Answer.—(1) The notice of forged endorsements referred to in the proviso to sec. 24 of the Bills of Exchange Act is clearly the discovery by the drawer that it had been paid on a forged endorsement. As to when he acquires this knowledge is entirely a question of fact, which would have to be proved in the same way as any other question of fact, in the event of the bank on which he made the claim resisting the same on the ground that he had not given notice within the proper time.

(2) Section 24 does not apply to the case described, where a man receives notice that a note has been discounted bearing his name, which he knows to be a forgery.

We do not think it follows that the Act, in declaring that no claim shall exist after a year, is intended to give a party the right to sleep on that claim for a year, and thereby injure the bank's position, perhaps destroying its chance of getting back the money. All that the proviso means probably is that notice given a year after the discovery shall not avail. It leaves the question of whether the notice given within a year is good or not to be dealt with under the ordinary principles of law.

Forged and Irregular Endorsements.

Question 291.—Bank "A" deposits a cheque through the clearing house against Bank "B." The cheque bears several endorsements, one being by power of attorney. There are funds to meet the cheque. A month or so after the clearing Bank "B" finds (1) that the power of attorney is not legal, or (2) that one of the endorsements is a forgery. Bank "B" asks Bank "A" to take back the cheque, and Bank "A" replies that under the rules of the clearing house the demand should have been made before 12.30 on the day of clearing the cheque.

The cheque bore the endorsement of the clearing bank as follows: "The Bank of ——, Montreal," and not the stamp "prior endorsements guaranteed, etc." Which bank loses? Is a guarantee of such endorsements necessary?

Answer.—The rule of the clearing house respecting the return of items before 12.30 has no bearing on a case of this kind. The point involved is simply this: What is the position of a bank which, after the lapse of a month, discovers that one of the endorsements on a cheque, paid by it in ordinary course to another bank, is forged or unauthorized?

The answer to this is that, under the Amendment to the Bills of Exchange Act, passed in 1897, the bank which received the money under these circumstances is bound to repay it, providing notice is given in accordance with the terms of the Act.

A guarantee of such an endorsement is not needed to establish this right, and the "Conventions and Rules" have no special bearing on the question, except to this extent, that by Rule 6 the stamp of the depositing bank is declared to be the endorsement of the bank. Under the amendment referred to the money may be recovered from the party to whom it was paid, or from an endorser who has endorsed subse t to the defective endorsement, so that the bank receiving t e money in this case would be liable on both grounds.

Missing Endorsement Necessary to Complete Title.

Question 292.—The "A" Bank presents to the "C" Bank through the clearing house a cheque payable to Smith & Jones, or order, and bearing the endorsement of John Smith and the presenting bank, which is paid; the want of Smith & Jones' endorsement is not discovered until some days afterwards, when it applies to the "A" Bank to procure the correct endorsement. The bank contends that the paying bank has lost its recourse against them by not returning the item on the day it was deposited, and also because it has been cancelled, but offer to procure the endorsement as an act of courtesy. The "C" Bank contends that it has the

right to demand the proper endorsement, or, failing that, repayment of the amount of cheque. Kindly favour me with your opinion.

Answer.—This case does not come within the rules of the clearing house, or the rules respecting endorsements. It is a simple case of money paid to a party who has no title to receive it, under a mistake of fact, which he is bound to return on discovery of the mistake. The cancellation is not material; it can be revoked by the paying bank. This case differs from one where money is paid on an item bearing a forged or unauthorzed endorsement, because the bank was not in any sense a holder of the cheque, there being a gap in the title. The Bank of Liverpool and River Platte Bank case dealt with a bill of exchange paid to a holder who had an apparently clear title, and the amendment to our Bills of Exchange Act, passed in 1897, deals with similar cases.

Endorsement on Deposit Receipts.

Question 293.—Do you, or do you not, think that the simple endorsement by a bank of any deposit receipts passing through its hands guarantees all previous endorsements? I think it does, but the point is often disputed.

Answer.—The endorsement on deposit receipts of the ordinary non-negotiable form are not endorsements in the sense of the Bills of Exchange Act, and do not necessarily involve the consequences which an endorsement on a bill of exchange carries with it. The practical effect of such an endorsement as described by our correspondent is no doubt very much the same. If a bank cashes its deposit receipt, which has come through the hands of another bank and is endorsed by the latter, it would have a right to demand a return of the money should it appear that the bank receiving it had, as against the owner of the receipt, no right to receive it. The depositing bank receives the money on the implied representation that it has a right to collect the amount.

Similar questions arise with respect to a cheque which has been paid by the bank on which it has been drawn.

Endorsements on cheques do not bring the parties under the contract of endorsement with the bank on which the cheque is drawn. The drawee is not a holder for value in due course when the cheque is paid, but a bank can recover the money from the party to whom it has been paid if, as a matter of fact, the party to whom it was paid had not a good title. His liability is not that of an endorser, but simply of a party who has received money under circumstances entailing upon the liability to refund it. The case of Ryan v. Bank of Montreal (12 Ont. Reports, p. 39, and 14 Appeal Reports, Ontario, p. 553), and the cases therein cited, contain much information respecting the principles involved.

CANADIAN BANKERS' ASSOCIATION, RULES RESPECTING ENDORSEMENTS.

Question 294.—Do the following endorsements require the guarantee of the depositing bank under the rules?

A. John Smith,
p. Tom Jones.

B. The Winnipeg Marble Company,
William Brown.

In the second case there is no incorporated company; Brown carries on his private business under the name quoted.

(2) If endorsements such as these are passed without the guarantee, what is the position of the paying bank?

Answer.—(1) Both of the above endorsements must be regarded as irregular within the terms of the rules. (See last part of Rule 2, and Rule 3.) They do not in either case indicate the authority of the person signing.

(2) If the endorsements such as those mentioned in the question are accepted by the paying banks without a guarantee, they are protected under the amendment to the Bills of Exchange Act of 1897, should they prove to be forged or unauthorized. Their rights against the depositing bank are somewhat differently conditioned from the rights they would have under a guarantee given in accordance with the rules;

the chief difference is that the right under the Act is conditional on proper notice being given as required by its terms.

In discussing these Rules in his article printed in the Journal for January, 1898, Mr. Lash explained the reason for treating such endorsements as irregular. We understand that there was a great deal of discussion before the principle was adopted by the committee. It was urged that no rule should be made which would bar out legal endorsements which these admittedly were, but the conclusion of the committee as a whole was in favour of this rule, as tending to greater care and regularity. Some of the reasons urged are quoted by Mr. Lash in the article referred to. (See p. 194.)

Rules Respecting Endorsements.

Question 295.—One of the "Rules respecting Endorsements" adopted by the Canadian Bankers' Association is as follows:

"If purporting to be the endorsement of a corporation, "the name of the corporation and the official position of the "person or persons signing for it must be stated."

(1) There seems to be some doubt as to what is covered by the term "corporation."

(2) A cheque payable to the "Smith Manufacturing Company" is endorsed simply "The Smith Manufacturing Company." Is this endorsement regular under the Rules assuming the company not to be an incorporated body?

(3) If it were a real corporation would the paying bank be entitled to demand a guarantee of endorsement?

Answer.— , , We think the rule covers either a real "corporation" or persons trading under a quasi-corporate name; the endorsement in either case would "purport" to be that of a corporation.

(2) The endorsement of "The Smith Manufacturing Company" purports to be the endorsement of a corporation.

whether the company is incorporated or is a private partnership. If it were a private partnership we think the rule would be complied with by the party endorsing it adding to his signature such words as the following:

"The Smith Manufacturing Company,

"By John Smith, one of the partners."

or, "By John Smith, Sole Proprietor."

(3) The rights of the paying bank under the rules are alike whether it is a corporation or not. If the endorsement does not state the name of the person signing and his position, it is irregular under the rules, and clause 8 applies. This gives the paying bank the right to demand a guarantee or to refuse payment until the irregularity is removed.

RULES AND CONVENTIONS RESPECTING ENDORSEMENTS.

Question 296.—A cheque is payable to the order of the "Metropolitan Polo Club" (an incorporated company). Would it be in order, under the Rules respecting Endorsements, if it were endorsed simply "The Metropolitan Polo Club" with a stamp, or should the name of someone acting on behalf of the club be added? It has been said that the simple endorsement is sufficient under Article No. 1, but under the third clause of Article No. 2 it is provided that where an endorsement purports to be that of an incorporation the official position of the person or persons signing must be stated.

Answer.—An endorsement reading simply "The Metropolitan Polo Club" would, if put on with proper authority, be a valid endorsement apart from the rules, but the provision in Article No. 2 referred to was deliberately adopted as tending to protect banks from irregularities in the matter of endorsements, and such an endorsement would not be regular under the rules. The name of the officer may be written or stamped, but in order that the endorsement may be regular it is necessary that the name of the proper officer should be added.

The paying bank is entitled under the rules to a guarantee of an endorsement such as that quoted.

Conventions and Rules Respecting Endorsements.

Question 297.—A cheque payable to order is endorsed by "mark" (properly witnessed). It is presented through the clearing house bearing the usual stamped endorsement of the presenting bank. Is the endorsement regular, or should the presenting bank be asked to guarantee it?

Answer.—The endorsement is quite regular.

Endorsement Stamps "Pay to any Bank."

Question 298.—Is there any essential difference between the clauses "pay any bank to order" and "pay to the order of any bank?"

Answer.—There is no practical difference.

Endorsement without Recourse

Question 299.—"A" of Halifax draws on "B" of St. John in favour of Bank "R" for $100, payable 30 days after date. Bank "R" discounts the bill for "A" and after placing on it the following stamped endorsement, viz.: "Pay to the order of any bank or banker for the bank of 'R,' Smith, Manager," forwards the bill to Bank "Z" for collection. The collecting bank "Z" of St. John obtains acceptance of the bill and at maturity returns it to the bank "R" dishonoured for non-payment. Bank "R" erases the above endorsement and re-collects the amount from "A." Can "A" sue "B" on the bill without further endorsement of Bank "R"?

The bill was for value.

Answer.—The bill should be endorsed by the bank back to "A" without recourse.

Cheque to Order of "AB, Treasurer," or "AB, Executor."

Question 300.—A cheque is drawn to order of "AB, treasurer," or "AB, executor." Is the endorsement "AB" sufficient without the word "treasurer" or "executor"?

Answer.—Such an endorsement would be sufficient, assuming that AB who endorses is the AB described in the cheque.

Irregular Endorsements.

Question 301.—A cheque payable to Mrs. A. A. Smith or order is endorsed "B. B. Smith," and paid under a guarantee.

(1) What is the exact position of the paying bank under the guarantee?

(2) Would its position be different if the cheque had been endorsed "B. B. Brown"?

Answer.—(1) We think the presenting bank guarantees that "B. B. Smith" is the proper signature of Mrs. A. A. Smith, the payee of the cheque, and that if this should turn out not to be the case they would be bound to return the amount of the cheque to the paying bank.

(2) We do not think a cheque drawn in favour of Mrs. A. A. Smith and endorsed "B. B. Brown" should be cashed even under a guarantee. If Mrs. Smith had remarried and her new name was Brown, no doubt the guarantee would have the same effect as in the first instance mentioned, but if it should prove that there is no connection between Mrs. A. A. Smith and B. B. Brown, we do not think the guarantee would affect the question at all. The presenting bank would probably be bound to return the amount of the cheque to the paying bank as money paid to them under a mistake. See reply to Question 292.

Rules Respecting Endorsements.

Question 302.—(1) Bank A holds a cheque on Bank B payable to "The Bonshaw Creamery Co. (Buttermilk) or order." This company is non-existent and cheque is endorsed "The Bonshaw Creamery Co., being the Bonshaw Dairying Co., J. A. Robertson, Sec'y, John McManus, Treas.," and also by Bank A with their regular endorsing stamp. Bank B certifies the cheque but refuses to cash on the grounds

that endorsement is irregular and asks A to specially guarantee. A contends that the endorsement is regular and that B incurs no liability in cashing. Is A correct? (2) Supposing the officers endorsing were not duly authorized, would not B have recourse against A without a special guarantee?

Answer.—We think that the endorsement mentioned is regular (see paragraph 2 of the Rules and Conventions respecting Endorsements), and that a guarantee would not give the paying bank any remedy against the presenting bank which it would not possess without a guarantee.

Endorsement "J. Smith" on Cheque to Order of Joseph Smith.

Question 303.—A cheque payable to the order of Joseph Smith is endorsed "J. Smith." Would the bank be justified in refusing to pay it if endorsed by and presented by another customer?

Answer.—Such an endorsement is as valid, if made by the payee of the cheque, as the full endorsement "Joseph Smith" would be, and we think that the bank would not be justified in refusing to pay the cheque, except under the circumstances or for reasons which would cause them to refuse if the full name had been signed.

Irregular Endorsements.

Question 304.—Is the endorsement "John Smith, Secretary Jones Manufacturing Company," upon a cheque payable to the order of "John Smith," irregular? Section 26 of the Bills of Exchange Act would seem to give the payee the right to endorse in this way if he so elects.

Answer.—We think such an endorsement as you describe, that is, the endorsement of a payee cheque drawn to order who has merely added to his name a description of his official position, may be regarded as a sufficient endorsement, but if instead of endorsing as "John Smith, Secretary Jones Manufacturing Company," he should endorse "Jones Manufacturing Company, by John Smith, Secretary," that would,

we think, not be an endorsement that would pass the title to a cheque drawn in favour of John Smith or order.

Irregular Endorsements.

Question 305.—Has a bank a legal right to refuse to accept the endorsements mentioned below:

Cheque payable to "John Smith, Trustee," and endorsed "John Smith"; or payable to "John Smith, Treasurer," and endorsed "John Smith."

Answer.—We think not. There can be no question but that the endorsement "John Smith" in either case would be sufficient; nevertheless in practice it is well to have the quality in which he signs added, and the payee might reasonably be asked to conform to the common practice.

Irregular Endorsement on a Marked Cheque.

Question 306.—A sight draft on one of our customers, accepted by him payable at our office, is presented when due and marked good. When it comes in from the bank holding it next morning, we find that it is payable to "M—— Hotel Co'y." and endorsed (presumably on behalf of the hotel company) "J. S.——," but without anything to show that the signature is so intended. (1) Have we a right to send back the item as being improperly endorsed? (2) If so, what is the position of the bank holding it? They cannot protest, as the bill is a day overdue. The bill had passed through the hands of another bank before coming into their hands. (3) Should we take any notice of the instructions of our customer not to pay it on such endorsement?

Answer.—(1) You have a right to refuse payment of the bill unless properly endorsed, and such an endorsement as you describe is not sufficient. (2) The holder to whom you return the bill need not protest it to protect himself. It is not a case where the bill is dishonoured for non-payment, but where the acceptor has in effect given the undertaking of his bank that the item will be duly paid, when presented with the proper endorsement. The holder should send it

back to the bank from which it was received, and the latter is bound to return the money, if any, which it has received from the item. If the bank has received value for the item to which its title is disputed, it must establish the title, or return the money. (3) We do not think your customers have any right to object to your paying the item. If you pay on an endorsement to which they object, their only remedy would be to sue you, and in course of the proceedings establish the fact that you had not paid the money to the proper party. If they did this, the bank to which you paid it would have to reimburse you.

Stamped Endorsements.

Question 307.—(1) What does the following stamp signify to the bank on whom a cheque is drawn when placed on local cheques, as regards former endorsements?

For Deposit Only.
Through.....Clearing House
Feb. 19th, 1896.
To the credit of the Bank.....
....
pro Manager.

(2) Would a bank be justified in refusing to pay a cheque made payable to John Smith and endorsed "John F. Smith," with the above stamp under Mr. Smith's name, without a guarantee of endorsement? Could a bank demand that the endorsement be guaranteed?

Answer.—(1) As to the effect of the common form of stamped endorsements of banks on cheques passed through the clearing house, the reply to Question 293 covers all that we could say. Under the law, as understood here, the presentation by any bank of an item for payment by the bank on which it is drawn involves an implied representation that it has the right to collect the amount, and if any of the prior endorsements should prove to be forged or unauthorized, so that as a matter of fact it had not the right to receive the amount, it would be bound to pay it back. The re-

cent judgment in London and River Platte Bank v. Bank of Liverpool, is, however, very disturbing, and if not reversed on appeal, will entirely change what is supposed to be the position of the law on this point.

(2) A bank is not bound to, and we think should not, pay a cheque drawn in favour of "John Smith" or order and endorsed "John F. Smith," for the reason that the endorsement is irregular. It follows that if the bank is willing to cash the cheque, it has a right to ask whatever guarantee it thinks proper.

Rules Respecting Endorsements.

Question 308.—E. A. Jones and W. A. Jones (equal partners) carry on business under the name of the Jones Manufacturing Company. Is the following endorsement (stamped or written) in accordance with conventions and rules of the Canadian Bankers' Association?

Pay to the order of
The Bank,
Jones Manufacturing Company,
per W. A. Jones.

Should W. A. Jones place anything after his name to show that he is connected with the company; if so, what?

Answer.—Under the rule we think that W. A. Jones should add after his name "proprietor," or "one of the firm," or something of that kind. The endorsement purports to be that of a corporation, and under Rule 2 the official position of the person signing must be stated. The absence of the description does not, however, make the endorsement less binding.

Irregular Endorsement.

Question 309.—Jones and Brown trade and carry on business together, though no registered partnership exists, Jones attending to all the banking. Brown receives a cheque in payment of goods sold by him, the cheque being made

payable to him personally. In the ordinary course of business, he hands the cheque over to Jones, but neglects to endorse it himself, which fact Jones fails to notice at the time. When bringing the cheque to the bank for deposit, the omission is discovered, and being short of funds, Jones endorses the bill "Brown, per Jones, Attorney," and then endorses the bill personally as usual. No written power of attorney from Brown to Jones exists, however.

I should like to know. (A) Whether a bill so endorsed should be received on deposit? (B) Whether such an endorsement can be defended? (C) Whether, if the manager of the bank, knowing all the facts of the case, decides to take the bill on deposit from the customer, endorsed as described, and authorized the teller to take it, the teller is thereby released from all responsibility as to the accuracy of the bill passing through his hands? (D) Whether in such a case, the teller should request the manager to initial the said bill, and if so, where the manager's initials should be placed: or whether the manager's verbal authorization would be sufficient? (E) Whether an endorsement of this kind, made in good faith, and without fraud, could be called a forgery or be contrary to the law?

Answer.—(A) We think the cheque which you describe should not be received. (B) This would depend on all the circumstances. (C) The acceptance of the cheque would be entirely a matter of the manager's discretion. (D) We should suppose it to be unnecessary for the teller to request the manager to initial the cheque, for if there was any dispute afterwards as to which officer of the bank was responsible for accepting the cheque, the true facts would not fail to be brought out. If initialed at all we think the proper place would be on the back under the endorsement. (E) An endorsement of this kind is not forgery; it is merely invalid for want of authority.

Irregular Endorsements.

Question 310.—A certified cheque on a bank in California, payable to Stephen Jones and Mrs. Wm. Smith, and

endorsed S. Jones and Sarah Smith, is paid by a Canadian bank. It goes forward endorsed by the bank in the regular way, and when presented by the Bank of B. to the drawee bank (the Bank of C.), is refused because endorsement is claimed to be irregular.

The cheque is protested by the Bank of B. The Canadian manager cannot have foreseen that it would have been protested, as, according to our custom, if refused it would have been returned for guarantee of endorsement.

The drawer of the cheque (the customer of the Bank of C.) made all the trouble, by putting "Mrs. Wm." instead of "Mrs. Sarah." Who should pay the costs in this case?

Do you think it would be advisable to request the Canadian bankers to use the Christian name of married women when selling drafts, etc.?

Answer.—The practice of Canadian banks, or the natural expectation of the Canadian banker in the particular case referred to, do not seem to us to have any bearing on the question involved, nor does the mistake of the drawer of the cheque, in putting "Mrs. Wm. Smith" instead of "Mrs. Sarah Smith," seem to us to affect the question.

The parties receiving the cheque could have prevented any trouble by returning it and requesting that a cheque in the proper names be issued, or by procuring Mrs. Smith's signature in the form required by the cheque, and we believe customary in such cases, i.e.,

"Mrs. William Smith,
Sarah Smith."

The question then simply is, was the cheque properly protested by the collecting agent, and if so, who should bear the costs incurred?

We are of the opinion that the bank was justified in protesting the cheque, and that the costs are chargeable against the parties for whom the Canadian bank cashed it. On the return of the cheque protested for non-payment the bank would be entitled to collect from them the amount of the cheque and all charges.

The practice of making cheques or drafts payable to married women in the form used in the above case is open to serious objection, and should, we think, be discouraged.

Unpaid Bill Charged to Endorser's Account with Notice to Him, but without Protest.

Question 311.—Is not a banker justified in charging an unpaid bill to the endorser's account, providing there are funds, without first protesting it, if he notifies the endorser by mail that he has done so, and would not such notice act as a notice of dishonour within the meaning of the Bills of Exchange Act?

Answer.—The bank would be certainly entitled to charge the endorser's account without protest with a dishonoured bill, provided it notifies the endorser that the bill is dishonoured. Whether or not the notice mentioned was sufficient for this purpose would depend on its terms. If the latter is so framed as to indicate that the bill has been dishonoured by non-payment this notice is sufficient. (See section 49, sub-sec. E, Bills of Exchange Act). It is probable that a mere statement in the latter that the bill has been charged to the customer's account would be held to sufficiently indicate its dishonour.

Liability of Endorsers to Drawee of a Cheque.

Question 312.—With reference to the reply to Question 293, as to the right of a bank that has paid a cheque to a party with a defective title, to recover the amount from him, are not the prior endorsers on the cheque under the same liability to the bank? Suppose the cheque had been paid to another bank which afterwards was wound up, could not the bank that paid the cheque look to the endorser from whom the defunct bank had received it?

Answer.—We think this is doubtful. The prior endorsers had to do with getting the money from the bank on which the cheque was drawn, and we do not see how the latter could have any right of action against them. The courts

are, however, giving more and more weight to the essential equities between parties, and there is a possibility that they might order the prior endorser in such a case to be made a defendant.

LIABILITY OF AN ENDORSER ON NOTES PAYABLE TO BEARER.

Question 313.—Is the liability of an endorser on a note payable to bearer the same as on a note payable to order?

Answer.—The liability is precisely the same.

SECURITY GIVEN BY THE MAKER OF A NOTE TO AN ACCOMMODATION ENDORSER AND ASSIGNED BY THE LATTER TO THE HOLDER OF THE NOTE.

Question 314.—A bank has discounted for A a note endorsed by B. A assigns to B a mortgage to secure him for his endorsement, which mortgage B subsequently assigns to the bank as collateral security to the note. At its maturity A requests the bank to renew it, holding the mortgage as security and releasing B. Would the bank have a valid security in the mortgage under the circumstances, and would B have any claim on or interest in the mortgage?

Answer.—B would have no claim if he were released from his liability as endorser. Whether the bank's security would be good would depend on the nature of the assignments to B and the bank. If it had been assigned to B expressly to indemnify him against his liability as endorser, then the assignment would cease to have any effect as soon as this liability came to an end, and the bank could not hold the mortgage by virtue of any rights derived from this assignment. It might have a valid claim because of its agreement with A, but in order to make the matter right the latter, whose property the mortgage is, should, by proper instrument, confirm the bank's right to hold it as security.

RIGHTS OF ENDORSERS AMONG THEMSELVES.

Question 315.—AB sends CD a three months' note in settlement for an invoice of goods. CD, finding he cannot

discount the note, returns it to AB, asking that another name be added in order that he may be able to negotiate it. AB gets EF to endorse the note, and returns it to CD, who endorses it beneath the signature of EF, and negotiates it. The note is dishonoured, and EF retires it after maturity. What is the position of CD and EF; who is the first endorser? If CD, then EF, as the subsequent endorser, must have the right to recover from him. Can CD set up that EF endorsed as surety for AB; and if so, is it a good defence on the part of EF that he endorsed, at the request of AB, to enable CD to get the note discounted?

Answer.—The question involved here is entirely one of fact. If EF endorsed as surety for CD, the latter must protect him; if he endorsed as surety for AB, and to make AB's note more satisfactory to CD, EF has no recourse against CD. The order of the names is not material upon the true facts being shown.

Executor—Can He Give Power of Attorney to Another?

Question 316.—Can an executor legally authorize another to sign documents for him as executor?

Answer.—Yes. This is not a delegation of authority, but merely the appointment of one to sign the principal's name, and the signature is in law that of the principal.

Estate of an Intestate—Powers and Responsibilities of the Administrator.

Question 317.—John Smith, a business man, with a bank account, dies intestate. A relative is appointed administrator by the court in the usual way. He opens an account with the bank, headed "Estate of John Smith, Henry Smith, Administrator." Is Henry Smith authorized to carry on the business temporarily, buy new goods, etc., or must he wind up at once? If the former, how long can he carry it on? Has the bank any responsibility in handling such an account?

Answer—It is the administrator's duty in such a case to liquidate the estate. He cannot safely buy new goods even to carry on the business temporarily. If he bought on credit new goods even to complete and prepare for market goods belonging to the estate, he would become personally responsible to the seller for the price, and if the venture proved a loss to the estate he might have difficulty in freeing himself from personal responsibility for the loss.

We do not think that a bank assumes any responsibility merely by receiving money from the administrator and paying it out again on his order, even if the latter is exceeding his powers.

Liability of Collecting Agent—Express Company.

Question 318.—A bank at Creditburg sent a promissory note for collection, addressed to "The Express Company, Duntown." The agent of the express company collected the note and remitted proceeds in error to an endorser on the note, instead of to the bank, which endorser made an assignment a few days afterwards.

Are the express company liable? Can they escape liability under the plea that the bank sent the note direct to the express company at Duntown instead of through the local agent at Creditburg?

Or is the agent only personally liable?

Answer.—Assuming that there were no instructions in the communication sent with the note which would justify the remittance of the proceeds to the endorser, the express company or the agent would be liable to the owner of the note. As to which is liable would depend on the extent to which the express agent is the agent of the company. It would seem to us that as the express company hold him as their agent for their ordinary business, which includes the collection of money, they would be liable. They might say that a collection sent to him by mail from another point and not through the local agent, is not within the usual scope of their regular business, but we doubt very much if that affects the

question of agency. He collected the money on their behalf, and the charge for the service was no doubt credited to them.

Delivery of Money Parcel after Banking Hours.

Question 319.—The agent of an express company, with which a special contract exists, brings to the bank office at 5 p.m. a parcel of money, and requests the one officer whom he finds there, to take delivery. This is declined as the safe (which has a time lock) is closed. Is the express company relieved from liability because of this tender of delivery?

Answer.—When the company makes a tender of delivery at the proper time, in a proper place, to a proper officer of the bank, in accordance with the terms of the special contract, its liability under that contract would probably be no longer in force, and the company would only be liable thereafter for the ordinary care of a bailee. We do not think, however, that a tender of delivery such as that described comes within the above conditions, and we are of opinion the company's liability continues as if the tender had not been made.

Forged Cheque Cashed by the Drawee Bank.

Question 320.—A cheque endorsed by the payee to a third party is presented by the latter to the bank on which it was drawn and duly honoured. It subsequently transpires that the drawer's name had been forged by the payee.

Would the bank have any recourse against the endorsee who was ignorant of the forgery when he obtained payment from the bank?

Answer.—The law is quite clear that a bank is bound to know the signature of its own customer, and that it pays a forged cheque at its own peril. In the case stated, the bank would have no recourse whatever against the innocent party to whom it paid the money. The position of the bank is analogous to that of the acceptor of a bill, who by section 54 of the Bills of Exchange Act, is precluded from denying the genuineness of the drawer's signature.

Writs of Garnishment.

Question 321.—A Division Court judgment is held against an individual employed as assessor by a municipal corporation at a salary of so much for each year's work. He is, however, in the habit of drawing the amount in instalments at irregular dates on application to his employers. Can the creditor do anything in the way of garnishing his salary?

Answer.—The creditor cannot, of course, garnish the salary which has been actually paid, nor can he garnish the salary not yet earned, as salary does not become a debt until earned. All he could do would be to garnish an arrears of salary earned and unpaid, and whether anything could be done in this direction in the case mentioned would depend altogether on the understanding between the corporation and the employee.

Writs of Garnishment.

Question 322.—Smith owes Jones, who cannot collect his debt. Jones hears that Brown is going to give Smith a cheque, and has a writ of garnishment issued and left at the chartered bank on which the cheque is drawn. The bank tells Smith that he had better go and arrange it with Jones, which Smith does. Could Smith have protested the cheque and held the bank liable? What action should the bank have taken in that case if they had failed to avoid the main issue as they did? The teller in this case held the cheque presented by Smith under the writ of garnishment, but suppose Smith had demanded same through his lawyer?

Answer.—We are advised that the garnishee order is quite ineffective in such a case, and that if the bank refuses to pay the party presenting the cheque merely on the ground that the money was attached by the writ, it would be liable to the drawer of the cheque for damages for dishonouring his cheque. We understand that only monies due or accruing due can be held under garnishee proceedings. At the time

the writ was served in the case mentioned, there was clearly no money due or accruing due to Smith.

Writ of Garnishment Served on the Maker of a Note by a Creditor of the Original Payee — Can the Maker safely Pay the Holder?

Question 323.—A is promissor on a note in favour of B, which is overdue and is held by a bank, having been duly endorsed by B. A creditor of B's serves a writ of garnishment on A for the amount due on the note. Can A safely pay the bank which holds the note, he being ignorant whether the bank holds it for value or merely for collection on account of B.

Answer.—The promissor is bound to pay the holder of the note. If B has any interest in the moneys after they are collected, his creditors might take proceedings to attach it in the hands of the bank. A, however, is protected if he pays the note to the holder.

Goods Sold in England by Canadian Firm, to be Drawn for Plus Expenses—Form of Draft.

Question 324.—A Canadian firm sells in England goods at a cost of $1,000, for which they are to draw at sight, covering every expense. Should they draw for $1,000 plus charges in Canadian currency, or for sterling amount, and if the latter at what rate of exchange?

Answer.—We think they might draw for the amount in currency, but in practice it would be more convenient to draw for such amount in sterling as would yield $1,000 at the current rate for sight bills.

Grand Trunk Railway and Canadian Pacific Railway Pay Cheques.

Question 325.—Are the vouchers issued by the Grand Trunk Railway and Canadian Pacific Railway Companies, cheques? An article in the English Bankers' Magazine calls attention to a judgment declaring that even cheques on a

bank requiring the receipt of the payee to be attached, do not come under the Bills of Exchange Act.

Answer.—A cheque must be an unconditional order to pay and must be addressed to a bank. We are inclined to think each of the documents referred to would be held to be addressed to a bank. There does not appear to be anything in the case of the Grand Trunk order which can be said to make it conditional. No receipt seems to be required before payment is to be made. The better opinion would seem to be that this document is a cheque.

The Canadian Pacific order requires, in case of payment by an agent, that it be first "properly endorsed," and the form of the receipt being on the back of the order, a "proper endorsement" would possibly be held to be a signature of the receipt, and nothing less. But there is nothing in the body of the order—that portion of the document which directs the Bank of Montreal to pay to the order of the payee—expressly making the signing of the receipt a condition without fulfilment of which the bank is not to pay, and we do not find anything which satisfies us that in the case of the bank, such a condition is implied.

Liabilities of Partners—Guarantee Bonds.

Question 326.—A gives a bank a guarantee securing advances made to C. A afterwards enters into co-partnership with C under the style of C & Co. How does this affect the guarantee? Is A held for all advances to C previous to the partnership, and equally liable afterwards as a partner with C for the indebtedness of C & Co.? Is his connection as C's partner as equally binding for C & Co.'s debts as his guarantee would be? Does his guarantee carry some additional security after he becomes a partner?

Answer.—The formation of the partnership does not affect the guarantee. A continues to be liable as guarantor for C's indebtedness, and becomes liable as one of the principal debtors for the obligations of C & Co. He might also become liable on the same debt as a guarantor or endorser,

and the effect of this would be that in the event of an assignment by the partners of their joint and separate estates, the bank would have certain ranking rights against A's personal estate, which might give it a decided advantage over the creditors of C & Co. who had not A's separate liability. We would therefore certainly think it well, if he has considerable means outside of the partnership assets, to take his guarantee for the firm's debts; this is a very common precaution.

It should be remembered that the partnership estate of C & Co. would not be liable for C's indebtedness to the bank, unless there was a novation—that is, unless they agreed with the bank to assume and pay the debt. The mere fact that there was such an understanding between themselves would not make the bank a creditor of C & Co. for advances to C, and under some circumstances this might be an important point.

Guarantee Written upon a Bill or Note.

Question 327.—A man writes and signs upon the back of a bill or note the following: "I hereby guarantee payment of the within." Is he entitled to notice of dishonour?

Answer.—We think not, and for the following reasons: The contract made is a contract of guarantee and not of endorsement, and to make a guarantor liable it is not necessary that he should receive notice of non-payment of the debt payment of which he guaranteed. The only doubt upon the subject arises under section 56 of the Bills of Exchange Act, 1890. That section is as follows: "Where a person signs a bill otherwise than as a drawer or acceptor, he thereby incurs liabilities of an endorser to a holder in due course, and is subject to all the provisions of this Act respecting endorsers." The words "and is subject to all the provisions of this Act respecting endorsers" do not appear in the English Act, and it may be contended that a person who signs a guarantee on a bill signs the bill otherwise than as a drawer or acceptor, and that, being subject to all the provisions of

the Act respecting endorsers, he is entitled to notice of dishonour. We think, however, that a person who signs a guarantee on the back of a bill cannot be said to sign the bill within the meaning of section 56. He is not signing the bill; he is signing a special contract which he has written upon it. If every person who merely places his signature upon a bill signs it within the meaning of section 56, then a mere witness, described as such, would incur the liability of an endorser. This, of course, could not be so. The statute cannot mean that a person who signs his name on a bill, with an express statement of the contract which he intends thereby to make, or of the capacity in which he signs, becomes liable to any greater extent than the special contract of capacity calls for. If this were not so, then a person who upon a bill for $1,000, wrote and signed a guarantee to the extent of $100 only, would under section 56 become liable for the whole thousand, a *reductio ad absurdum*.

Guarantee Written on a Note.

Question 328.—A B transfers to C, for value, a note which is payable to his own order, endorsing it as follows: "I guarantee payment of the within note. A B." There is no other endorsement on the note.

Is this endorsement sufficient to transfer the note to C, and is A B in a position of an endorser requiring notification if the note is dishonoured, or is he a surety?

Answer.—In our opinion notice of dishonour is not requisite to retain his liability.

We do not think that the writing on the back of the note is technically an endorsement, or that it passes the title to the note. As C, however, has acquired it for value, he is entitled to a proper transfer, and can enforce the same by virtue of sec. 31, sub-sec. 4, of the Act.

Guarantee Written on a Note.

Question 329.—(1) Could the amount of the subjoined note be collected from Jno. Smith, if at maturity Jno. Jones was unable to pay it?

(2) Could it be collected from Smith if he had simply written his name on the back without guaranteeing it?

(3) In question (2) would it make any difference if the proceeds of note had gone to Smith's credit, he having discounted it?

$100 Elmira, Ont., 2nd Jany., 1900.

Three months after date I promise to pay to the Federal Bank or order at the Federal Bank, here, the sum of one hundred dollars, value received.

Jno. Jones.

Endorsed.

For value received I hereby waive notice of protest of within note and guarantee payment of same.

John Smith.

Answer.—As the law at present stands, Smith is not liable as endorser, and the fact that the proceeds of the note had gone to Smith's credit would not make any difference in this respect; but if it could be shown that the transaction was a loan to Smith on the security of the note, he would be liable, as borrower, to repay the loan, but not as endorser.

The question as to Smith's liability as guarantor is by no means easy to answer. The Statute of Frauds makes it necessary to the validity of a contract of guarantee that it should be in writing, signed by the guarantor or his authorized agent. The courts have held that under this statute all the essential parts of a contract must appear in writing. The contracting parties and the consideration are, of course, essential parts of every contract. In the case of a guarantee a subsequent statute provided that the consideration need not appear in the writing, but might be proved by other evidence, but it is still necessary that the contracting parties should appear. Assuming that both the face and the back of the note may be looked at for the purpose of showing the contract in writing, the question: with whom is the contract of guarantee made? appears to be left in doubt. "I hereby guarantee payment of the within note." To whom is payment guaranteed? It is not necessarily the Federal Bank,

as the promise is to pay the Federal Bank or order, and the guarantee simply means that John Jones will pay the note in accordance with his promise. If the intention was to guarantee to the holder for the time being that the note would be paid, it can hardly be said that the parties to the contract appear in the writing.

Again, it might be quite consistent with the transaction that the guarantee was made with a third party who was interested in the payee of the note and who might have given him credit on the strength of the guarantee that Jones' note would be paid. The fact that the writing does not necessarily show the person with whom the contract of guarantee is made makes it necessary to give verbal evidence, and this is what the statute prevents being given.

On the whole we think that Smith could not be made liable on his guarantee; but, if the note were held by the Federal Bank when it matured, and if the contract of guarantee were really made with the bank, and if the bank brought the action upon it, it might possibly be held that, as the name of the bank appeared in the writing, the provisions of the statute had been sufficiently complied with.

Guarantee Written on a Note.

Question 330.—A sends B in settlement of an account a promissory note payable to B and endorsed by C. Would the difficulty about C's liability be removed if he should add to his endorsement the words: "For value received I hereby guarantee payment of the within note"?

Answer.—The answer to Question 329 will explain the position here.

Payments Made on Legal Holidays.

Question 331.—A gives his cheque to B in payment of an indebtedness on the evening preceding a legal bank holiday. The bank remains open for the transaction of business on the holiday, when A withdraws the balance at his credit, thus cutting the holder of the cheque out of his money. Has the

holder of the cheque any recourse against the bank? His plea would be that he naturally assumed that the bank was not open on the holiday and held his cheque until the first business day thereafter, when he found the funds had been withdrawn?

Answer.—A bank is under no obligation whatever to the payees or holders of unmarked cheques. There is nothing to hinder the bank making payments to its customers outside of the regular business hours, whether on a legal holiday or not, and its sole obligation is to pay its customers' cheques when presented, if it then has funds in hand to meet them.

Legal Holidays—Right of a Bank to Accept or Pay its Customers' Cheques on a Holiday.

Question 332.—(1) Has a bank any right to refuse or accept a cheque on a legal holiday?

(2) In Montreal English banks do business on Province of Quebec holidays:

(*a*) If a bank were to refuse a cheque on account of insufficient funds, on such a holiday, would the customer have a case for damages against the bank?

(*b*) If there were sufficient funds immediately after opening of business the next day?

Answer.—(1) With reference to holidays other than Sunday, we think a bank may accept a cheque if presented on a holiday, and if it has no funds we see no legal reason why it should not so state. It can of course decline, because of the holiday, to do anything in the matter, and we think should, for its customers' protection, decline to give any answer unless it is prepared to honour the cheque.

(2) We think that it is quite legitimate for a bank to transact business on these holidays with any person who wishes to do so. We do not think the bank would be liable to a customer for anything that takes place on the holiday merely because it is a holiday.

Banking Hours.

Question 333.—Is it optional with a bank to close at one o'clock on any other day than Saturday, in lieu of the latter day? Do not the provisions of the Bills of Exchange Act, respecting the hours at which bills may be protested, impose a duty on the banks as to the hour up to which they must keep open?

Answer.—Were it not for the peculiar relationship between a bank and its customers, whereby it undertakes to make payments on their account out of the moneys in its hands on presentation of cheques, it might be said that a bank is free to close its doors at any hour it may choose, but the fulfilment of this undertaking doubtless requires that a bank should be open at the usual hours unless it give reasonable notice to the contrary. But such notice having been given, we think it is clear that a bank may arrange to close on any day of the week at one o'clock, and we know that it is not an uncommon practice in the old country for banks to have their offices in small places open only on a certain day or certain days of the week.

As regards the Bills of Exchange Act, this has no bearing on the matter except so far as the hours fixed for the protesting of notes may be taken as indicating what is recognized to be the general practice as to the hours for keeping open. The Act, however, so far as this point is concerned, only refers to the hour before which a note cannot be protested—*i.e.*, 3 o'clock, and that this does not affect banks directly is quite plain. Banks usually close at three, and although the practice of admitting notaries after three is a very general one, we do not think that if the notary found the office locked and protested a bill for non-payment, the bank would be under any responsibility in the matter. The most that could be said is that they had impliedly undertaken to be open till three o'clock on certain days of the week to make payments on behalf of their customers.

Goods Hypothecated to Bank.

Question 334.—A sells to B & C certain goods, receiving a deposit thereon. B and C apply to their bankers for a loan to make a further payment, offering to hypothecate to the bank said goods, as security. The bank, being given to understand that the purchase was complete, received the hypothecation from B and C in the presence of A, the banker explaining to A the nature of the security he was taking, A making no objection. The following day A gave B and C a bill of sale, and B and C gave (innocently, so far as intention to defraud the bank is concerned), a chattel mortgage on the goods of A. Could A, under the circumstances, be stopped from proceeding under his lien ahead of the bank's hypothecation?

Suggested Answer.—Presuming the goods were and could be legally hypothecated under section 74 of the Bank Act—A as an unpaid vendor might have protected himself by disclosing the fact to the bank. The claim of the bank under hypothecation would be prior to the chattel mortgage.

Identification of the Payee of a Cheque.

Question 335.—In your answer to Question 338 you say: "A bank can refuse to pay a cheque to order until the bank is satisfied as to the identity of the endorser."

A cheque is presented at the bank; the payee, who is unknown to the bank, requests the bank to accept the cheque pending his identification. This is refused, though there are sufficient at credit of drawer, and by the time payee is properly identified the funds are withdrawn, and payment of the cheque refused.

Can the holder sue the bank for damages?

Answer.—Inasmuch as the bank, before accepting the cheque, is not in privity with the payee, no liability to the holder would arise under the circumstances disclosed in the first question. We think, however, that notwithstanding the disadvantages occasioned by the bank becoming the acceptor of a cheque, referred to in the answer to Question 338, the

bank should in fairness mark the cheque under the circumstances indicated in the above question, so as to protect the payee's interests during the necessary delay involved in the identification.

Identification of the Payee of a Cheque.

Question 336.—A cheque for $100 drawn by Jno. Smith, of Ottawa, payable to his own order, is presented by him at a bank for payment. Although not personally known at the bank, yet the bank knew that Jno. Smith, of Ottawa, is worth thousands of dollars. Mr. Smith is informed that the bank will cash his cheque provided he can be identified by someone known at the bank. He returns with Mr. Jones, of Hamilton, a well-known business man, who states that he knows Jno. Smith, of Ottawa, and that he is possessed of considerable means, and then Mr. Jones writes under Mr. Smith's endorsement the words, "Identified by Thos. Jones." The bank cashes the cheque, forwards it to Ottawa, from whence it is returned unpaid, and it turns out that the drawer was not the wealthy Jno. Smith, of Ottawa, and that Mr. Jones was mistaken, there being several Jno. Smiths, of Ottawa. Can the bank, having paid the cheque on Mr. Jones' identification of Mr. Smith, recover from Mr. Jones?

Answer.—Under the circumstances mentioned, Mr. Jones was not, we think, liable to the bank in any way, unless his act was fraudulent. If he believed the Jno. Smith whom he introduced to be the wealthy Ottawa man of that name, and in good faith made that representation to the bank, thereby inducing the bank to cash the cheque, he would clearly not be liable. The point is very fully discussed in Derry v. Peek, before the House of Lords, where these propositions are stated by Lord Herschell: First, in order to sustain an action in such a case there must be proof of fraud and nothing short of that will suffice. Second, fraud is proved when it is shown that a false representation has been made, (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false.

Identification of the Payee of a Cheque.

Question 337.—A, known to cashier, makes the acquaintance of B at an hotel, and introduces him (B) to the bank for the purpose of getting a cheque cashed on another town, but A does not endorse cheque. The cheque is returned protested for non-payment, and B turns out to be a sharper, and meantime has departed. Do you think the bank can recover the amount from A, although he has not endorsed the cheque?

Answer.—So far as the question goes it indicates that what A told the bank was true, *i.e.*, that B was really B. If this is all he is not liable.

If A made representations to the bank on the faith of which they cashed the cheque he might be liable, but even then fraud must be proved. We might again quote the following proposition bearing on the point, from the judgment of Lord Herschell in Derry v. Peek.

"First, in order to sustain an action in such a case "there must be proof of fraud, and nothing short of that "will suffice. Second, fraud is proved when it is known that "a false representation has been made, (1) knowingly, or "(2) without belief in its truth, or (3) recklessly, careless "whether it be true or false."

Identification of the Payee of a Cheque.

Question 338.—A cheque drawn to order is presented for payment by an individual unknown to the officials of the bank. He claims to be the payee. Is the bank entitled to delay paying the cheque while it takes diligent steps to satisfy itself as to the identity of the payee?

Answer.—We think the bank is so entitled. Unless the cheque has been accepted by the bank, and a liability thereby incurred towards the payee, the bank by refusing absolutely to cash the cheque would not be responsible to anyone but the drawer; *a fortiori* it would not be responsible to the payee by merely delaying payment. The drawer's direction to the bank in the cheque is to pay to a particular person,

or to his order. Unless the drawer affords the bank some means of immediately identifying the payee, he must be taken to have intended that the bank should see to his identity. He therefore cannot complain if the bank takes a reasonable time to do this. Therefore the action of the bank in not immediately paying the cheque would not be considered a refusal to pay, entitling the drawer to an action for damages because his cheque was dishonoured. If the cheque had been accepted by the bank and a liability thereby incurred towards the payee, the bank's refusal to pay immediately on presentation by the proper person would give him the right to sue the bank at once, but his claim would be limited to the amount of the cheque and interest; he would have no claim for special damages; and, as costs are now in the discretion of the Court, it is entirely probable that the Court would refuse the plaintiff his costs if he were unreasonable in commencing his action, and if the bank in delaying payment acted reasonably under all the circumstances and paid the amount into Court as soon as it obtained reasonable evidence of identity.

Identification of the Payee of a Cheque.

Question 339.—With reference to Question 338, is the inference to be drawn from the answer thereto that it becomes a duty devolving upon the ledger-keeper before accepting a cheque payable to any specified person, to satisfy himself as to the identity of the said person, in order to insure the bank against the possibility of action being taken by him (the payee) on the ground of delayed payment?

Answer.—The question asked arises very naturally from the reply to Question 338, but we do not think that the change effected by accepting a cheque in the position of the bank towards the holder of it, involves consequences sufficiently serious to call for any change in the customary practice. The concluding part to the reply to Question 338 indicates that the bank would not suffer in costs or damages if it acts reasonably in the matter of requiring or procuring identification of the payee of a marked cheque.

Identification of the Payee of a Cheque.

Question 340.—Must a bank on which a cheque is drawn get the payee, if a stranger, identified?

(2) What is the custom of banks in Toronto on this point?

(3) Does not the English law hold good in Canada, namely, that a bank is protected if the cheque purports to be endorsed by the person to whom it is payable?

Answer.—(1) The bank must satisfy itself as to the identity of each payee of a cheque to "order" paid over the counter, or pay the cheque at its own risk.

(2) It is, we believe, the practice of the banks in Toronto to require identification as a rule; no doubt exceptions are sometimes made when the amount is small, but such exceptions are at the risk of the bank.

(3) Banks in England are protected under section 60 of the English Bills of Exchange Act, which is not in the Canadian Act.

The position of the banks in Canada in this matter is fully discussed in the reply to Question 338.

Identification of the Payee of a Cheque.

Question 341.—A cheque drawn on the Bank of , Montreal, payable to John Smith or order, is presented by a party claiming to be John Smith, but who cannot procure identification. Is the bank in question justified in refusing to pay the cheque on these grounds?

Answer.—The point was fully discussed in the answer to Question 338. The bank is entitled to delay payment until it can satisfy itself of the payee's identity, but it is bound to do what is necessary, and within a reasonable time. If the payee is absolutely unknown to any person in the place, the bank should doubtless refer to the drawer for instructions.

The point is one which is not usually pressed to its ultimate logical conclusion, *i.e.*, while it is the bank's duty to

satisfy itself as to the payee's identity, the payee is equally interested in satisfying it and usually for his own convenience provides the necessary proof.

"INDEX NUMBER"—MEANING OF SAME.

Question 342.—Please explain the meaning of the "Index" number, to which allusions are frequently made in financial papers. It apparently refers to the price of commodities.

Answer.—It is made up by adding the prices of certain quanti' of the principal staple commodities, and is used for th. .urpose of comparing the variation of values from time to time.

INDIVIDUAL USING TRADE NAME.

Question 343.—Jno. Robinson carries on business under the name of "The Rochester Pork Co.," for which he keeps a separate set of books. He has other assets which he treats as private assets not belonging to the business.

If a note were signed by him

"The Rochester Pork Co.,
"per John Robinson,
"John Robinson,"

would this be in any sense a joint note, and would both have to be sued in case of non-payment?

Answer.—In this case "The Rochester Pork Co." is merely another name for John Robinson, and the assets of the company are Robinson's personal assets, on precisely the same level as those which he treats as his private estate. The note is of no more force than if signed "John Robinson" alone.

If suit were brough' against John Robinson on such an obligation the property which he holds either under the name of The Rochester Pork Co. or under the name of John Robinson would be liable.

Insanity of a Deposit Customer.

Question 344.—A customer of a bank, who has become insane, has a balance at his credit. Before becoming insane he accepted drafts payable at the bank. The manager of the bank knows that the customer has been placed in an asylum, but has not been notified by anyone of his insanity. Would the bank be safe under such circumstances, in charging the acceptances to the customer's account.

Answer.—The insanity of the customer, to the knowledge of the bank, has the effect of revoking this authority, and the bank would not be justified in paying the acceptances. That the bank have not been officially notified of the customer's insanity does not signify; the fact that it is known to them is sufficient.

Insurance and Assurance.

Question 345.—What is the difference between "insurance" and "assurance"?

Answer.—The terms are used interchangeably.

Insurance Certificates Accompanying Bills of Lading.

Question 346.—A certificate of insurance is attached to a bill of lading. Must this certificate be drawn in favour of the drawer of the relative bill of exchange, or may it be in favour of the bank negotiating the draft? Is either form of procedure legal?

Answer.—We do not think it is material to whom a marine certificate of insurance is issued. The loss under these certificates is usually made payable to a specified person or to his order, and if in case of loss the party holding the bill of lading holds a certificate of insurance which is originally, or by endorsement, made payable to himself, he is entitled to collect the insurance.

Insurance on Property Held as Security.

Question 347.—If a bank notifies a customer that it has assumed possession of goods assigned to it under section 74

of the Bank Act—although allowing the goods to remain on the customer's premises—ought it to require a transfer of the insurance into its own name, or would the policies issued in favour of the customer—loss being payable to the bank—be sufficient to protect it, in case of fire?

Answer.—The fact that the bank has taken possession of goods assigned to it under section 74 should, as a matter of precaution, be notified to the insurance company, as it might be held to be a change material to the risk under the conditions of the policy, but notwithstanding the fact that the bank takes possession its interest is still that of a mortgagee, and the customer remains the "general owner."

Insurance on Hypothecated Goods.

Question 348.—A mercantile house holds a policy of insurance covering goods in their possession, "their own or held in trust or on commission for which they are responsible in case of loss." The owner of certain goods stored with them takes their warehouse receipt for these goods, for the purpose of borrowing on the same, and they assign to him this policy of insurance with the written consent of the company. If he borrows on the warehouse receipt from a bank and makes the loss, if any, under the policy payable to it, would the bank's position as to the insurance be in order?

Answer.—The transfer of the policy in the way described, if properly done, would, we think, make it a contract of insurance covering only the goods mentioned in the warehouse receipt, provided these are part of the goods which the policy originally covered, and the position of the owner and the bank would be the same as if the policy had been originally taken out by the owner, on his own goods alone. Under the wording quoted, the goods might have to be goods for the loss of which while stored with them the mercantile house would be responsible, to bring them within the policy.

While we think the case put by our correspondent is fully covered by this answer, we wish to say that in questions respecting fire insurance, very much depends upon the facts

and the exact wording of the policies, endorsements, etc., and general questions may not describe these with sufficient exactness to ensure a correct reply.

Insurance Payable to a Bank "as its Interest may Appear."

Question 349.—A bank holds security under section 74 on beef, pork and cured meats. The insurance policy lodged with the bank covers beef, pork, cured meats, lard and lard pails, bacon sacks, salt, and all such other articles as are used in a pork packing establishment. The loss, if any, under the policy is made payable to the bank, "as its interest appears."

A total loss by fire occurs. Can the bank retain the whole insurance? If not, what are its rights?

Answer.—We think the insurance must be apportioned to the various items which it covers, and that the bank is entitled to receive the portions covering beef, pork and cured meats only.

If the loss, if any, had been made payable to the bank absolutely, not limited to its interests in the property, the bank could, doubtless, collect and retain the insurance.

Fire Insurance Policies Held as Collateral Security.

Question 350.—Can insurance on the store and goods of a trader, assigned as collateral security for money advanced for the purpose of carrying on his business and meeting his liabilities, be legally recovered?

Answer.—The policy would be voided if it were assigned to a creditor who had no insurable interest in the property, even if the company assented thereto, or if it were assigned to a creditor who had an insurable interest without the company's consent. But the insured may assign any sum of money which may become payable under the policy to his creditor. This is not an assignment of the contract of insurance. Under ordinary circumstances the creditor could

recover from the insurance company the amount of any loss so assigned.

Transfers of Insurance Policies, or Property Covered thereby.

Question 351.—Under one of the clauses found in policies issued by fire insurance companies in Canada, any transfer or assignment of the property insured, without the written consent of the company, renders the policy void. Does not this seriously affect the position of banks taking security under section 74? Schedule C is in express terms an assignment of the goods.

Answer.—The clause referred to would not apply to assignments under section 74.

The Supreme Court held in Peters v. Sovereign Fire Insurance Co. (1886), that such an assignment of the property as would render a policy void under this condition must be an absolute assignment of all the insured's interest therein, and that the clause in question is not to be read as forbidding the mortgaging of the property, where the insured retains an insurable interest. The case of an assignment under sec. 74 comes very clearly within the terms of this judgment, and if this is the only condition in the policy affecting the matter, notice of security given under sec. 74 need not be given.

In a later case, Salteria v. Citizens Ins. Co. (1894), the condition in the policy reads as follows: "This policy shall not be assignable without the consent of the company . . .; all encumbrances effected by the insured must be notified within fifteen days thereof; in the event of any change in the title to the property insured the liability of the company shall thenceforth cease." A chattel mortgage covering the goods insured was afterwards given to a creditor, and in the chattel mortgage all policies upon the goods were assigned to the mortgagee. The court held that the policies were avoided by their transfer to the chattel mortgagee without the consent of the company, and also by the execution of the

chattel mortgage which was held to constitute a "change of title" to the property. It was also held that want of notice of the chattel mortgage would, in view of the condition as to encumbrances, avoid the policy.

In the latest case, Torrop v. Imperial Fire Ins. Co. (1896) the clause on which the defence was rested made the policy void "if the said property should be sold or conveyed, or the interests of the parties therein changed." The Supreme Court of Canada held that a bill of sale which had been given, although not an absolute transfer of the property, was a change of interest which avoided the policy under this condition.

With such conditions in the policy as existed in the last two cases, the giving of security under sec. 74 without the consent of the company, would probably avoid the policy. It is to be remembered, however, that in almost every instance the loss, if any, under such policies is by their terms made payable to the bank holding the security, and under such circumstances no question could arise.

In so far as insurance contracts in Ontario are concerned, where the statutory conditions govern, security under sec. 74 would not contravene any of these, but in the other provinces it would depend entirely upon the particular language of the condition.

This was a point in the last mentioned case which is of general interest. After giving the bill of sale above mentioned the owner of the goods made a general assignment for the benefit of his creditors, by the terms of the assignment transferring to his assignee, among other things, all policies of insurance. The consent of the company to this assignment of the policies was not obtained, and this seems to have been regarded by the Supreme Court of Nova Scotia as a transfer in breach of the condition, which would have avoided the policy.

Legal Rate of Interest.

Question 352.—Has the legal rate of interest been reduced from 6 per cent. to 5 per cent.?

Answer.—Yes. The legal rate of interest for liabilities incurred since the date of the passing of the Amending Act (7th July, 1900), is 5 per cent. See Statute of Can. 63-64 Vic., cap. 29.

Interest on Daily Balance—Method of Computing.

Question 353.—A customer who is allowed 2 per cent. interest on his daily balances of $5,000 and over in current account is in the habit of making deposits the last thing in the day to make his balance over the $5,000. This is largely withdrawn the next morning and made good again before closing. The effect is that the minimum balance in each day is considerably below $5,000, but the balance at the close of business is always considerably in excess. On what balance should interest be allowed?

Answer.—There is no doubt that the term "daily balance" means the balance standing in the account at the close of the business each day, and in the account mentioned the customer would be entitled to interest on the balance as appearing in the books at the close of business. Such an account may not be worth the interest paid, but the bank's remedy is to cancel or amend the contract.

The Act Respecting Interest.

Question 354.—(1) In what shape did the usury bill pass?

(2) How will it affect banks re-discounting private bankers' paper? Many private bankers take notes, say at six months with interest at 10 per cent.

(3) If a note representing a loan is drawn for a lump sum representing the principal and interest at a higher rate than 6 per cent., without any mention of the rate on the face of the note, would the new law apply?

Answer.—(1) The interest bill as passed provides in effect that unless the rate per cent. per annum is expressed, interest at 6 per cent. per annum only can be collected.

(2) The Act will apply to private bankers' paper held by a bank if the terms of any note so held brings it within

the scope of the Act—that is, if a bank takes from a private banker a note which bears a rate of interest per diem and not per annum, it can only regard the note as a security bearing 6 per cent. per annum.

(3) The note described may be, as between the maker and the lender, a note which includes interest, but so far as any other holder of the note is concerned, it is a bare promise to pay the amount of the note at maturity, without any reference to interest at all, and would, in the hands of a holder in due course, constitute a valid claim for its face amount. The Act does not interefere with contracts of this kind. If, for example, a man should sell a private banker a note of $100 for $100, there is nothing to interfere with his right to claim the $100 at maturity, and any subsequent holder, who acquired the note in good faith before maturity, would be, if possible, in a better position than the payee.

Joint Deposit, Joint Depositors Deceased.

Question 355.—A deposit receipt is issued which is payable to two persons or either of them; in the event of both dying, leaving wills disposing of the amount in different ways, what course should the bank take?

Answer.—Assuming that they did not die simultaneously, but that one survived the other for a longer or shorter time, the deposit became payable to the one of the two depositors who survived the other, and after his death to his executors. The claims of the beneficiaries mentioned in the two wills must be settled between the claimants and the executors of the survivor. The bank is not concerned.

Joint Deposits—Executors.

Question 356.—An account is opened in the name of three executors. One dies leaving no will, and his heirs make an arrangement between themselves regarding his estate. Should the bank allow the remaining two executors to draw the money? No provision was made in the will for the appointment of a substitute in the event of the death of any of the executors.

Answer.—This question is in effect answered in the reply to Question 361 given later. Under the ordinary rule two survivors of three depositors would be entitled to draw the money. In addition to this it will be seen from sub-sec. 2 of sec. 84 of the Bank Act that where trust money stands in the name of three persons the receipt of two is a sufficient discharge therefor. Even if the three executors were alive the bank would be authorized to pay the money to two of them, although as a practice this is open to objection.

If out of the three executors one should die, the estate is vested in the remaining two. If a second dies it becomes vested in the survivor, and although he has power, and it may be his duty to appoint another trustee, still until this is actually done he has full control of the trust estate. Should he die the control passes to his executors, then to the surviving executors, or executor, then to the executors of the last surviving executor, and so on.

Joint Deposits.

Question 357.—One partner in a firm having a current account with a bank dies. Is the surviving partner entitled to draw the balance? If he should continue to make deposits in the name of the firm, can he withdraw the funds? Would his rights be affected by the appointment of an executor or administrator of the deceased partner?

Answer.—The surviving partner has a right to withdraw the money on deposit at the time of the other partner's death. In this respect the account must be regarded as a join deposit, the control of which passes to the survivor.

If the surviving partner deposits money in the name of the firm we think he is entitled to withdraw the same and to sign the firm's name for the purpose. His rights would not be affected by grant of letters of probate or administration in connection with the estate of the deceased partner.

Joint Deposits.

Question 358.—(1) In the event of a deposit being made to the credit of two parties, father and son, payable to both or either, would the government be entitled to succession duty on the death of the party who made the deposit?

(2) In such a case would the son be entitled to hold the money against other heirs?

(3) In the event of the death of the party who made the deposit could the bank be sued by the other heirs should it pay the amount to the survivor?

(4) If one of two parties who have a joint deposit with the bank, payable to both or either, dies, and under his will bequeaths a portion of the deposit to a third party, can the bank legally pay the survivor (a) if it has no knowledge of the will; (b) if it has knowledge of the will?

(5) It is the practice of some banks not to pay to the survivor in these cases without the production of a probate of the will or letters of administration, and then to require the consent of the legal representatives of the deceased depositor. Is it not a pity that the practice is not uniform?

Answer.—(1) The right of the government in the matter seems to be settled by the Act of 1893, chap. 5, sec. 4 (d), the substance of which is that if the deceased person had been absolutely entitled to the amount of the money so deposited, the succession duty must be paid. The sub-section quoted mentions a beneficial interest passing by survivorship and it is clear that this legislation does not affect the relations between the bank and the survivor.

(2) We think he could, but there might be circumstances connected with the matter which would affect his title.

(3) The executor or administrator might, of course, sue, but as the survivor has a right to draw the money the bank would be technically protected in paying it to him. If a suit were brought it would be prudent for the bank to pay the money into Court.

(4) The will of the deceased joint depositor would not affect the bank's position one way or the other. The most that could be said is that the legatee might have a claim on the money in the hands of the survivor.

(5) We think that most banks recognize the right of the survivor of two joint depositors to control the deposit, which right exists whether the deposit is by its terms payable to either of them or to both, but there will no doubt always be some who will take the extra precaution which you mention, but which in the absence of anything like fraud we believe to be unnecessary.

You speak of the person "making the deposit" as if there were some distinction between the joint depositors; but we think that when money is paid in to the credit of two parties it must be regarded (so far as the bank is concerned) as deposited by and the property of both, and the person who pays in the money as the agent of both.

Deposits in the Names of Two Parties Jointly.

Question 359.—Some banks issue interest bearing receipts and open savings bank accounts to say "Jno. Smith and Robt. Jones, both or either," and pay the money on one signature. Suppose one of the parties dies, ought the bank to pay on the signature of the survivor?

Answer.—We understand that payment to the survivor is proper, even when the deposit is made without being repayable to "both or either." The control of the joint deposit passes, by our Ontario law, to the survivor, and he is entitled to receive the amount from the bank. The point is, of course, much clearer when by the terms of the original deposit either party was entitled to draw the money.

Deposits Payable to Two Persons or Either of Them.

Question 360.—The holder of a deposit receipt, on account of his age, procures a renewal receipt in favour of himself and wife "or either of them," so that either may draw

the money. Subsequently the wife presents the receipt endorsed by her husband (his mark witnessed), and asks for a renewal in favour of herself alone. The deposit receipt is one which is marked "not transferable." Does the bank take any risk in renewing the deposit receipt in the form which she desires?

Answer.—We think not. The original depositor, while he was in a position to deal with the deposit as he pleased, placed the amount at his wife's disposal, and the bank is therefore justified in acting on her instructions.

Joint Deposits.

Question 361.—We issue a deposit receipt undertaking to account to AB and CD or either of them, for a certain sum and interest. In the event of the death of one, should we not require the consent of the representatives of the deceased before making payment to the survivor? Is not death something which AB and CD in the case mentioned did not provide for?

Answer.—So far as any dealings with the deposit during the lifetime of both depositors are concerned, the terms of the receipt govern: the bank is bound to pay to either of the parties provided he complies with the terms of the receipt. On the death of one, then, under the law of the province of Ontario, the survivor is entitled to receive the money, and this would follow whether the receipt had been made in favour of AB and CD simply, or of AB and CD or either of them. It may be true that the money does not belong to the survivor, or that the representatives of the deceased are entitled to a share in it, but that does not affect the question. The survivor holds the actual title, and others may be the beneficial owners, but the bank deals with the holder of the title.

Joint Deposits.

Question 362.—John Billings opens a savings bank account in the name of "John Billings and Mary Billings or either." John Billings dies. Is the bank justified in paying

the amount to the executors of John Billings, or must it only pay on a cheque of Mary Billings? Should Mary Billings be the executrix, would it make any difference?

Answer.—The executors have no control. See the reply to Question No. 356.

Joint Deposits.

Question 363.—One partner in a firm having a current account with a bank dies. Is the surviving partner entitled to draw the balance? If he should continue to make deposits in the name of the firm, can he withdraw the funds? Would his rights be affected by the appointment of an executor or administrator of the deceased partner?

Answer.—The surviving partner has a right to withdraw the money on deposit at the time of the other partner's death. In this respect the account must be regarded as a joint deposit, the control of which passes to the survivor.

If the surviving partner deposits money in the name of the firm we think he is entitled to withdraw the same and to sign the firm's name for the purpose. His rights would not be affected by grant of letters of probate or administration in connection with the estate of the deceased partner.

Joint Deposits.

Question 364.—Deposit receipts and savings bank deposits are often payable to either of two parties. Is this sufficient, or would the following (from the rules of a bank in India) be better: The bank continues to grant deposit receipts "payable to either or survivor," in the case of two persons, and "payable to them, or any one of them or to the survivors or survivor in the case of three or more"?

Answer.—When a deposit made in the name of two parties is intended to be payable to either of them or to the survivor, the issue of a receipt payable to them or either of them is sufficient. By the law in Ontario such a deposit becomes payable to the survivor in case of the death of one of the joint depositors, so that it is not necessary to express this in the receipt.

With regard to similar deposits made to the credit of three or more persons, the same point would be sufficiently covered by making the money payable to them, "or any one of them." In the case of the death of one or more of the joint depositors, the deposit would become payable to the survivors or survivor, and, as before, we would consider it unnecessary to express this.

Joint Stock Companies—Authority of Officers to Accept Bills.

Question 365.—With further reference to the above, the secretary-treasurer of a limited company accepted drafts on its behalf. On enquiry to the president as to his authority I was told that it was not necessary that he should have authority given him. On this information would I be justified in taking the acceptance?

Answer.—All that seems to be involved in the statement made by the president is his opinion that the secretary-treasurer, by right of his office, has power to bind the company in the way mentioned, and we do not think this is the case. Even, however, if the president meant to assert more, we do not think his assertion, if not consistent with the fact, would necessarily be binding on the company; it would depend on the scope of the president's authority. You would not, on the information given, be justified in taking this acceptance.

Bills Accepted by Attorneys and Officers of Incorporated Companies. Collecting Agent's Responsibility for Regularity of Acceptance.

Question 366.—(1) A bank received for collection a bill of exchange drawn on an incorporated company; does the bank incur any liability with regard to the acceptance which it takes, *i.e.*, that it is signed by the proper person or persons on behalf of the company? Would the bank's position be affected by the fact that the company's account was or was not kept with it?

(2) A draft drawn on John Jones is left at his store, and his clerk writes John Jones' names across it without adding any initials. Does the bank holding it for collection incur any responsibility?

(3) If the collecting bank allows a bill to be accepted by one who claims to be an attorney, and it afterwards transpires that his authority has been previously cancelled, what would be the collecting bank's position? Is the party giving such a power of attorney under any obligation to advise the banks generally of its cancellation, he having lodged it only with his own bank?

(4) Is the authority of the proper persons to accept a bill of exchange on behalf of an incorporated company fixed by statute or by by-law of the company? Should there not be a requirement that the names of officers authorized to bind a company by signing bills of exchange and promissory notes should be recorded in the country registry office?

Answer.—In answer to the Questions 1, 2, and 3, it may be said generally, that the collecting bank is bound to use due diligence in procuring the acceptance of the drawee, and is responsible for the consequences of its negligence in this respect. An acceptance by unauthorized officials, or by one acting outside of the authority conferred on him, counts for nothing.

(4) The proper officers to sign on behalf of an incorporated company are usually fixed by by-law. It is not usual to find statutory provisions on the subject. If there were no by-law the question would depend upon the scope of the authority of the persons signing.

The parties who give a power of attorney are under no obligation to give notice of its cancellation to the banks generally. When a bank is asked to take the signature of an agent or attorney on his principal's behalf, it must either ask for evidence or take the risk of accepting the signature without evidence.

Joint Stock Companies—Limitation of Borrowing Powers.

Question 367.—The amendment of the Company's Act passed by the Dominion Parliament last year, says, that "the limitation on the borrowing powers of the company shall not apply to or include moneys borrowed by the company on bills of exchange or promissory notes, drawn," etc., etc. As a cheque is a bill of exchange within the meaning of the Bills of Exchange Act, would not a bank be justified in advancing money to a company in the form of an overdraft, provided always that they had the account covered before surrendering the cheques?

Answer.—We do not think that the amendment to the Company's Act respecting the limitations of the borrowing powers of joint stock companies would cover an overdraft; that is not borrowing on a bill of exchange, in the sense referred to by the Act. Although an overdraft is created by the company drawing cheques (which are bills of exchange) upon the bank, they cannot be said to be borrowing on these cheques, because when a cheque for which there are no funds is paid the amount thereof becomes a direct loan to the company, and the cheque plays no further part in it.

Form of Notes Given by Joint Stock Companies.

Question 368.—(1) What is the proper wording of a note to be given by a limited company (say The A.B.C. Co., Limited) to a bank?

(2) A note reads "We promise to pay," etc., and is signed as follows:—

The A. B. C. Co., Limited.

Richard Roe, Sec.-Treas. John Doe, President.

Could John Doe and Richard Roe be held personally liable on such a note?

Answer.—It is correct to make such a note read "The A. B. C. Co., Limited, promise to pay," in which case only

the signatures of the authorized officers are necessary, or "We promise to pay," to be signed as set out in your second question.

In either case the company only is liable as promissor, and the persons who sign as its officers are not under any personal liability.

JOINT STOCK COMPANIES—POWERS OF OFFICERS.

Question 369.—The shareholders of a company incorporated in Ontario pass a by-law authorizing the directors to appoint a president and other officers, and declaring that the president is to be the manager of the company, with power "to exercise all such powers of the company as are not required by law to be exercised by the directors or by the company in general meeting." Would this by-law empower the president to sign cheques, acceptances, etc., on behalf of the company?

Answer.—We think that the by-law is quite sufficient for the purpose named.

JOINT STOCK COMPANY—TRANSFER OF SHARES WITHOUT DIRECTORS' CONSENT.

Question 370.—The by-laws of a joint stock company forbid the transfer of stock by shareholders without the consent of the directors. Would a transfer of paid-up stock be valid if made in the absence of such consent, or in the case of its refusal?

Would your answer also apply in the case of stock not fully paid up?

Answer.—In the case of stock on which there is a liability we think that under such a by-law the directors might refuse to permit the transfer; but they cannot act capriciously: they must accept a transferee who is in good financial standing, and can refuse only on substantial grounds.

If the stock is fully paid up, and no further liability exists, the directors would not, we think, be able to prevent

the transfer, notwithstanding the by-law, unless under very special circumstances.

The law on these points is fully discussed in Smith v. Bank of Nova Scotia, in which the right of a shareholder in a bank to transfer partially paid stock to a solvent transferee without the consent of the directors is involved.

A Curious Case.

Question 371.—A draft, in duplicate, is purchased from a bank in Canada, by John Smith, payable to himself and drawn upon its own branch in a United States city. Payee is murdered in United States territory, and leaves no will; on his person is found the original, not endorsed, which is subsequently presented at the branch on which it is drawn, endorsed by an administrator, duly appointed by a United States judge. Meanwhile letters of administration have been granted by a Canadian judge to deceased's brother, his heir and next of kin, who holds the duplicate. At his request the issuing branch stop payment by telegraph, and on presentation of the original it was refused.

The case stands thus:—The United States administrator has the original, the Canadian the duplicate; the bank the money. Suits are threatened against the bank at both its United States and Canadian branches by the respective administrators. Is the money, represented by the original and duplicate draft, subject to United States or Canadian jurisdiction? What would be the bank's best action to prevent the courts of both countries from giving judgment against it, thereby causing the amount to be paid twice over?

Answer.—Pay the money into a Canadian court.

Bank Notes and Legal Tenders.

Question 372.—Is a private individual forced to receive payment of a debt in bank notes, or may he demand legal tenders in any amount?

Answer.—No person can be forced to accept bank notes in payment of a debt. He is entitled to be paid in gold coin

or Dominion notes, which, as their common name implies, are a "legal tender." The option of paying in gold or legal tender notes rests with the debtor. The creditor is bound to accept American gold ($5 pieces and upwards) at its face value, or British gold at $4.86⅔ to the sovereign (in both cases good tenderable coin being understood) or legal tender notes.

Letters of Credit—Transferability.

Question 373.—Is the right to draw under the ordinary letter of credit, issued by a Canadian bank, transferable by an endorsement on the credit to the following effect: "For value received I hereby transfer this letter of credit and the balance due thereunder to CD"?

Answer.—We do not think that the assignment of the letter of credit would transfer the right to draw, and there is no amount due under the credit, at any rate by the bank on which it is drawn. We see no difficulty, however, in the party giving a power of attorney, under which a third person might avail himself of the credit, but only in the name and on the behalf of the party accredited.

Letters of Probate—Duty of Bank in Connection therewith.

Question 374.—Sub-section 3 of section 84 of "The Bank Act" protects a bank which pays over a deposit not exceeding $500 in pursuance of and in conformity to letters of administration or probate granted by certain courts. Has a bank the right to demand the lodgment of authenticated copies of the letters of probate before payment? If so, is the case different where the deposit exceeds $500?

Answer.—The sub-section referred to does not give the executor or administrator appointed by a foreign court the right to demand payment: it merely justifies and protects the bank in making the payment if it should be willing to do so. Under the circumstances, it is of course free to name any reasonable conditions, but apart from this it is clear

from the terms of the sub-section that the bank is not protected unless authenticated copies of the documents are lodged with it.

When the deposit exceeds $500, the sub-section does not apply, and the ordinary rules of law prevail. The person seeking payment must produce letters of administration or probate or other sufficient authority, granted in the Province where the payment is to be made, and in this case the bank is not entitled as of right to retain the evidence produced.

Lien Notes.

Question 375.—Referring to the case of Dominion Bank v. Wiggins, reported at page 80 of Vol. 1 of the Journal, and to the comment on the case at page 2, in which you express the opinion that a lien note could possibly be so framed as to make it negotiable and yet do all that is effected by the lien note now commonly in use,—would the following form of note meet the case:

Six months after date I promise to pay.....or order at the.....Bank, Winnipeg,.....dollars, value received.

This note is given for a .... reaper, on which I hereby give a lien to the holder of this note from time to time as security for the payment of this note.

Answer.—We think that the above is a negotiable promissory note, giving the holder thereof all the rights and remedies usually possessed by the holder of a negotiable instrument. Although it is stated that the money to be paid is the consideration for the sale of the property, there is nothing importing that anything further is to be done by the vendor of the property in the way of making title or otherwise. On the contrary, the maker gives a lien to the holder of the note which would imply, if anything, that the sale to the maker was complete. We do not say that the lien given would afford a safe security, as it would be void as against creditors under the Chattel Mortgage Act. We

merely say that mention of the lien on note would not prevent its being a negotiable instrument.

Unregistered Lien Note in the North-West Territories.

Question 376.—Is a lien note made in the North-West Territories negotiable as a promissory note when not registered? *i.e.*, can a holder for value sue a previous endorser in his own name? Does the omission to register deprive the payee of the note of his lien on the chattels?

Answer.—The ordinary lien note is not a promissory note within the meaning of the Bills of Exchange Act and is not negotiable in the usual sense of the word; registration does not affect the matter one way or the other. The person who acquires such a note has therefore no remedy against the endorsers such as the Act provides in regard to bills of exchange.

The non-registration of the note does not, as we understand the matter, deprive the payee of his lien, but it leaves the goods open to be claimed by a subsequent mortgagee or purchaser. This would however depend upon the wording of the statute requiring registration.

Life Policies as Security.

Question 377.—A bank holds an insurance policy for $5,000 upon the life of a customer (properly assigned to it and acknowledged by the company) as security for advances. The customer fails owing the bank $3,000, and the premiums are subsequently kept paid up by the bank, otherwise the policy would be lost. The insolvent dies before his estate is finally wound up, and the assignee, who has knowledge of the bank's security, claims on behalf of the estate the $2,000 resulting from payment of the policy over and above the bank's claim. Could the bank be compelled to surrender the money to him?

Answer.—So long as the bank holds the policy as security only, and has not foreclosed the rights of the creditor or

his assignee, or obtained a release of their interest in the policy by other proper means, it is bound to account for any surplus. Any premiums the bank pays to keep the policy alive would, of course, be added to its claim on the policy.

Life Insurance Policies Issued by Friendly Societies.

Question 378.—Can a life insurance policy in a friendly society be transferred to a chartered bank as collateral for advances?

Answer.—The answer to this question would depend upon the form in which the policy was issued, as possibly as well on the by-laws of the society, but if there is nothing in the policy or by-laws to prevent the assignment to the bank the assignment as collateral for advances would be good.

Notice to Limited Company — "Ltd." Omitted from Address.

Question 379.—In sending a notice through the post to a "limited" company, would the omission of "Ltd." from the address on the envelope effect the legality of the notice?

Answer.—A notice addressed to a joint-stock company, with the word "limited" omitted from the address, would nevertheless be a good notice.

Limited Liability Companies.

Question 380.—(1) Why are limited companies not required to publish a list of shareholders and to afford information as to their subscribed and paid-up capital, the directors authorized to sign, etc.? This information is necessary as a basis for granting credit. (2) Are limited companies registered in any public office?

Answer.—We think that most companies incorporated in Canada are bound to make an annual return to one or other department of the government, covering a list of their shareholders and a statement of their assets and liabilities. There is no doubt, however, that the principle has not been as fully recognized in legislation as it should be. In our opinion all

joint-stock companies should be bound to furnish information very much in the same lines as banks have to send to the Finance Department at Ottawa. Our correspondent asks why they are not, to which we presume the only answer is that public opinion has not thus far pressed sufficiently strong for it. As regarding signing officers, we do not know any way in which the public can be protected except by taking the ordinary precautions, when they are asking to give credit, of making sure they are dealing with the proper officers of the company.

Use of Abbreviation "Ltd." on Bill of Exchange Given by a Limited Company.

Question 381.—If an incorporated company signed paper, *i.e.*, notes, drafts, or cheques, with the word "limited" abbreviated so as to read "Ltd.," would the said paper be in any way invalidated?

Answer.—Such an abbreviation would in our opinion in no way affect the company's liability on the paper.

Lost Deposit Receipts.

Question 382.—In the case of a lost deposit receipt, should the depositor be required to furnish a bond before paying the amount?

Answer.—A deposit receipt is not transferable; the banks do not incur any responsibility to any party, other than the depositor himself, who may hold the document, unless the banks are notified of a transfer of the claim. It is therefore safe enough to pay a lost receipt without a bond.

Lost Drafts.

Question 383.—A purchases from a bank at Toronto a draft on its Montreal office, which is lost in the mails. A asks the bank for a duplicate draft, offering to give them a bond of indemnity, signed by himself and the payee, for twice the amount of the draft, but the bank insists upon having another substantial name. Are they legally entitled to demand this?

Answer.—We think that they are entirely within their rights. A mere release of the rights of the purchaser of the draft and of the payee does not help the matter, nor justify the acceptance of a bond of indemnity from them, which the bank does not regard as financially sufficient. The point is that if the draft in question has been received by the payee and endorsed by him, a holder in due course has an unquestionable right to collect the amount from the bank; and besides, if the payee were not honest, he could, even after giving the indemnity and procuring a duplicate, endorse the original if it afterwards reached his hands, and it might become a valid claim in the hands of a third party. In the view of the responsibility of the bank on the draft itself their request is quite reasonable.

Endorsed Note Lost in the Mails and not Presented for Payment on Date of Maturity.

Question 384.—A customer deposits with the bank a note for collection, on which there is a good endorser. The note is payable at a distant point, and when deposited for collection has still two months to run. The bank forwards it at once to its agents for collection, but on enquiry ten days after maturity of the note they find that their letter had never been received. The makers of the note are worthless. Was not the endorser discharged for want of notice, and would not the bank be responsible for neglect in not looking for an acknowledgment of the letter?

Answer.—Unless there were some exceptional circumstances connected with the case, any responsibility for the loss of the bill in the mails must fall on the bank. The liability of the endorser, however, would be preserved, if when the cause of delay ceases to operate, even although the note were ten days overdue, presentment be made with reasonable diligence and notice of dishonour sent. Section 46 of the Bill of Exchange Act excuses delay in presentation when "caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence." We

think that the bank's neglect to see that the letter was acknowledged was not negligence within this section, and that the delay was beyond its control. There appear to be no English cases covering the point, but there are some American cases in which it was held that delay in the post office, when a bill is mailed in good time, is a valid excuse for delay in presentation.

Married Woman—Bank Account in Her Spinster Name.

Question 385.—What is the best way to transfer a bank balance standing in the name of a spinster to her married name? Is a declaration of transmission an actual necessity?

Answer.—We think no declaration is necessary. The only question involved is one of identity. The heading of the account may be changed on advice from the depositor that in consequence of her marriage she takes and will hereafter sign her married name; or she may draw for the balance due her and redeposit in her new name.

If she had money at her credit in her maiden name, and drew a cheque in her married name, the bank (assuming that it was aware of all the facts) would not only be quite safe in honouring the cheques, but probably would be bound to do so.

Wife's Control of Her Separate Estate.

Question 386.—A bank holds a bond securing a standing overdraft up to a certain limit. Bondman dies, and it is suggested that the customer give a demand note in favour of his wife as collateral security to cover any overdraft present and future, and his wife to hand bank a mortgage on her property in favour of bank as security for her endorsement. Would this hold? Would it help matters if note were made by wife in favour of husband, and a mortgage given by wife to husband, and assigned by him to bank to secure note?

Answer.—Under the law in force in Ontario, a wife is entitled to enter into contracts which will bind her separate estate, and there is nothing to prevent her from endorsing her husband's note and making herself liable upon the contract of endorsement with respect to her separate estate, nor

is there anything to prevent her from mortgaging her property to secure her endorsement. Therefore, if the formalities with respect to the making of the mortgage be properly observed, it could be made to the bank, and would form a security to the bank. Of course, the mortgage could only be taken to secure the amount of the existing indebtedness. It could not be held for future advances.

Bill of Exchange Payable to a Married Woman in the Province of Quebec.

Question 387.—May a cheque or bill, payable to a married woman residing in the Province of Quebec, whether she has or has not a marriage contract, be properly paid or negotiated on her endorsement alone, and without her husband's consent?

If the act of payment or negotiation took place outside of the Province of Quebec, would that make any difference in the position of the parties?

Answer.—We are of opinion that the provisions of the Bills of Exchange Act must govern with respect to the powers of a married woman in the matter of endorsing or negotiating cheques and bills of exchange, and wherever these differ from the Quebec law they must prevail.

So far as her capacity to incur liability as an endorser is concerned, the Act leaves the matter untouched. Section 22 makes "capacity to incur liability co-extensive with capacity to contract." If under the code she is able to contract, her endorsement on a bill does not create any liability on her part as an endorser.

This does not, however, affect her power to endorse or negotiate a cheque or bill in such a way that the drawee may lawfully pay it, or the transferee become the lawful holder.

Under sections 54 and 55 of the Act, both the acceptor and drawer are precluded from denying the capacity of a payee to endorse, and a subsequent endorser is precluded from denying the regularity of the previous endorsements. Under these sections, therefore, if a bank should accept a cheque

payable to a married woman, it is bound to pay it on her own endorsement, for it is precluded from denying her capacity to endorse. If the bank is so bound it clearly has the right to charge the cheque when paid to the drawer's account, but apart from this the drawer also is precluded from denying the capacity of the payee to endorse.

Considering that a bank is bound to pay its customer's cheques according to their tenor, and that in making a cheque payable to a married woman, the drawer in effect declares (because of this preclusion) that the amount is to be paid to her notwithstanding any disability she may be under, we think that a bank in the Province of Quebec is not only bound to require the husband's authorization, but might be liable to its customer for damages should it refuse his cheque because of the absence of such authorization only. The question being a very important one, we thought it well to submit it to counsel in the Province of Quebec, from whom we received the following reply:

> "I am of opinion that under the law of this Province the wife may endorse so as to pass the title to a bill of exchange, even though she does not make herself liable, and that a plea of her capacity could not be raised by an endorser, drawer, or acceptor, as they are precluded from doing so by the Bills of Exchange Act, sections 54 and 55."

As regards the second part of the question, the effect of payment or negotiation outside of the parties of the Province of Quebec, we think that the rights of the parties would depend upon the law where the transaction took place. A married woman is under no disability that would call her endorsement into question in any Province other than Quebec.

Wife's Endorsement Invalid in Quebec.

Question 388.—A married woman holding property in her own right endorses a note as an accommodation endorser. Could a bank, having discounted same for the promissor, collect from her? Would it be necessary for her husband to

consent to her doing business in her own name, or would his signature be necessary on the note along with hers?

Answer.—In the Province of Quebec, under the circumstances stated, the woman's endorsement would simply be invalid,—a wise and vital remnant of French law that provides for the protection of women.

As the law of Nova Scotia, from which Province this question came, is almost the same as that of New Brunswick, the following opinion obtained from Mr. Fred. R. Taylor, Barrister-at-law, St. John, N.B., will be of interest to our readers:—

In reply to the following question: "A married woman "holding property in her own right endorses a note as an "accommodation indorser. Could a bank, having discounted "same for the promissor, collect from her? Would it be "necessary for her husband to consent to her doing business "in her own name, or would his signature be necessary on "the note along with hers?"

Although there is no decision by the New Brunswick courts on this or on any analogous point, there would seem to be no doubt that in this Province the bank could collect from the married woman.

As to the second question the consent of her husband to her doing business in her own name is not required by the New Brunswick Married Woman's Property Act, 1895, and would be immaterial. His signature to the note would not in any way affect the wife's liability out of her separate estate.

Of course at common law the contract of a married woman would be void. Certain relief could be obtained in equity, and this relief was further greatly enlarged by the various Married Woman's Property Acts. The provisions of the Married Woman's Property Act, 1895, 58 Victoria, cap. 24, relating to the power of married women to contract, are as follows:—

Section 3, sub-sec. 2. "A married woman shall be capable of entering into and rendering herself liable in respect

of and to the extent of her separate property on any contract, and of suing and being sued in all respects as if she were a *feme sole*....and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise."

This is practically the same as the similar Nova Scotia Statute, Revised Statutes Nova Scotia, cap. 112, sec. 13. "A married woman shall be capable in all respects as if she were a *feme sole*.

(*a*) Of entering into any contract and of making herself liable upon such contract in respect to her separate property to the extent of such property, and

(*b*) Of suing or being sued in contract, tort or otherwise."

It is almost word for word with the English Married Women's Property Act, 1882, sec. 1, sub-sec. 2. "A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued either in contract or in tort or otherwise, in all respects as if she were a *feme sole*."

The English Courts held that the Act conferred no general capability to contract on the married woman, but merely a capability to contract "in respect of and to the extent of her separate property." Palliser v. Gurney, 19 Q. B. R. 519. To remedy the limitation of the liability on contracts, which under the adopted interpretation seemed capable of being carried to almost absurd results, the Act was amended by 56 and 57 Victoria, cap. 63. Sub-section 3 of sec. 3 of the New Brunswick Act similarly broadens the effect of sub-sec. 2. "Every contract entered into by a married woman otherwise than as agent—

(*a*) Shall be deemed to be a contract entered into by her in respect to and to bind her separate property, whether she has or is not in fact possessed of or entitled to any separate property at the time when she entered into such contract;

(*b*) Shall bind all separate property which she may at that time or thereafter be possessed of or entitled to."

Since a married woman is under the New Brunswick Act liable for her contracts to the extent of her separate property (where she has not contracted as agent being deemed to have contracted in respect to her separate property) it would seem that her endorsement of a note, though for accommodation, would render her separate property liable. There are conditions under the somewhat similar New York statute to the effect that a married woman is liable on a note made by her for her husband's accommodation:

Bowery National Bank v. Sniffen, 54 Hun. 394.

Queen's County Bank v. Leavett, 56 Hun. 426.

The Ontario courts have also reached a like result on this point under a statute much resembling as to the question of contracts the New Brunswick Act.

Consolidated Bank of Canada v. Henderson, 29 U. C. C. P. 519.

There seems to be no English decision on this matter. That in the case put in the question the married woman was a party to the note as endorser and not as maker would not affect her liability. The strongest contention against the liability of the married woman in the present case would be that the fact she was an endorser would show that the contract was not "in respect to her separate property," but sub-sec. 3 of sec. 3 clearly disposes of any effect that contention might otherwise have.

Taking into consideration the United States and Ontario decisions under similar statutes on analogous points, and the tendency manifested by the New Brunswick courts in all cases in which the Act has been passed upon to interpret it broadly, there would seem to be no doubt of the married woman's liability under the above circumstances, in this Province.

If the wisdom of the French law be admitted, what is to be said of the Statutes of the Maritime Provinces?

Documents Payable to Married Women in their Maiden Names.

Question 390.—(1) Mrs. Smith's maiden name was Mary Jones. She presents to a bank for payment a cheque payable to Mary Jones. Has she authority to endorse "Mary Jones"?

Are there any legal points involved in this case?

(2) If she holds mortgages must she have her name on these changed?

Answer.—(1) A cheque given to a married woman, drawn payable in her maiden name, is clearly her property, and she has a right to endorse it in her maiden name. It is customary in such cases, to have the endorsement made in some such way as this:

"Mary Jones, wife of John Smith.
Mary Smith."

There are no legal points involved. The question is purely one of identity.

(2) Mortgages taken in her maiden name are not affected by her marriage. There are different ways in which assignments and releases are drawn in such cases. She might, for example, be described in the document as "Mary Smith, wife of John Smith, etc., formerly known as Mary Jones, of the town of ...., Spinster." In this case, also, it is merely a question of making the identity clear.

Married Women in Province of Quebec—Bank Deposit.

Question 391.—A married woman in the Province of Quebec has a deposit in a bank. Can it be seized under judgment against her husband? There is no marriage contract.

Answer.—We are advised that it can be seized.

Married Woman in Province of Quebec—Right to Operate a Bank Account.

Question 392.—Can a married woman (in the Province of Quebec) operate a bank account without the authority of

her husband, even when living in community with him, provided the balance does not at any time exceed $500 (or when the aggregate does not exceed $500)?

Answer.—The case of such a depositor would be covered by sec. 84 of the Bank Act, and she would be free to deposit and withdraw money without her husband's consent, provided that the balance does not at any time exceed $500, no matter what the aggregate amount of the transaction may be.

Married Women—Power of Attorney Given before Marriage.

Question 393.—A Miss Smith has a store. She marries, and the day before her marriage she gives a power of attorney, witnessed by an unmarried woman only, to her sister, Miss M. Smith.

The store will be carried on in Miss Smith's name by her sister, Miss M. Smith. Acceptances come on Miss Smith as usual, and are accepted under power of attorney by Miss M. Smith. The firm is registered in the old name I believe.

Does this in any way affect her banker or the other bank which presents acceptances?

Answer.—We presume the statement that the firm is registered in the old name is an error; there being no firm, but simply one person carrying on business, no registration is necessary. As to the main point, the marriage of Miss Smith does not rescind the power of attorney, and if she chooses to carry on business in her maiden name, she is quite free to do so. The liability is her liability, and the only question involved is one of identification.

Married Woman's Property Act—Warehouse Receipts and Securities under Section 74.

Question 394.—(1) How will the recent amendment to the "Married Woman's Property Act" affect the position of a married woman in respect to contracts?

(2) Can a married woman resident in Ontario give security under sec. 74 and issue warehouse receipts; and, if

so, would they be equally binding whether or not she owned the warehouse where the goods are stored?

(3) Can a man give security under sec. 74, or warehouse receipts for goods stored in a warehouse which he has rented?

Answer.—The recent amendment has removed what might be described as the property qualification necessary to enable a married woman to enter into such a contract as the giving of a promissory note, etc. It is not necessary now that she should have property at the time of the signing of the note, and if she acquires property afterwards a creditor has the right to look to it for her debt.

(2) A married woman may give security under sec. 74, or warehouse receipts, under the same circumstances in which a man could give them. See answer (3).

(3) A man can give valid security under sec. 74 if he is qualified under the terms of the Act to give such security upon goods he owns, wherever they may be stored, whether in his own warehouse, a rented warehouse, or in any place whatever. He could give a warehouse receipt for goods which are in his possession as bailee, whether stored in a warehouse which he owns or which he has possession of as a tenant or otherwise. The point is that he must be in actual possession of the goods.

Married Woman's Separate Estate.

Question 395.—Does a married woman who has separate estate render that estate liable when she signs a note with her husband, or has she to sign another paper showing she intended to make her separate estate liable by her signature? (2) Does a married woman's name with that of her husband to a joint note, secure her dower to the bank discounting the note?

Answer.—(1) We are advised that no special declaration on the part of a married woman, that she intends to bind her separate estate, is necessary to make her undertaking binding thereon. If she has, as a matter of fact, separate estate at the time she signs the note, then her signature, either

with her husband or in any other connection, binds it: (2) The legal question affecting separate estate of married women and their dower rights in their husband's lands, are among the most intricate and difficult, and upon them judges and lawyers are constantly differing. We find ourselves unable, therefore, to give a satisfactory reply to this query. It would probably be held that an inchoate right to dower in her husband's lands would not be separate estate sufficient to make the promise of a married woman enforcible if she had nothing else. The above refers to the law in the Province of Ontario.

Cheque Drawn to "Order" Altered to "Bearer" by Drawer after Being Marked Good.

Question 396.—A cheque drawn payable to John Smith or order is marked good by a bank, specially to pay a pressing claim of John Smith's. Subsequently it is altered by the drawers—who are also the holders—from "order" to "bearer," and cashed at the outside bank by the drawers who used the money to satisfy what they considered a still more pressing claim than that of John Smith.

Can payment of the cheque be legally refused by the bank until endorsed by John Smith?

Answer.—The bank on which a cheque which has been materially altered being marked good, is drawn, would have the right to refuse payment, not because of the want of any particular endorsement, but because it is an altered cheque, and therefore void under sec. 63 of the Bills of Exchange Act.

The usual question arising out of such circumstances as you mention is whether the bank is justified or safe in paying the cheque. The answer to this would be that if the bank had come into privity with the payee of the cheque, by the cheque having come into his hands after they had accepted it, they certainly could not then pay it to another without his consent. If, however, the cheque has remained in the hands of the drawer, and has never been delivered to the payee, any

arrangement between the bank and the drawer respecting the cheque would be free from risk.

Agreement to Maintain Minimum Free Balance—Account Drawn below Stipulated Amount.

Question 397.—A current account bears interest at 3 per cent., $10,000 to be free. If the balance should run below that amount, say to $4,000, would you consider the difference between the actual balance and the amount to be held free in the nature of a loan, and charge 6 per cent. interest?

Answer.—Presumably the free balance is intended to represent remuneration for services of some character rendered by the bank, and what would be a fair adjustment should the balance fall below the amount agreed upon would no doubt depend upon the nature of the services rendered, and the other facts of the matter.

Deposit in Name of Deceased Minor.

Question 398.—A minor (resident in Ontario) dies leaving a balance in savings bank. Can the father of such minor draw the money? What is the legal course to pursue?

Answer.—Money at credit of a deceased depositor who was a minor at the time of his death, can only be legally drawn by his administrators duly appointed. There may be cases where it would be reasonable to pay the amount to the parents, but such payments could only be made at the bank's risk. Under the present procedure in the Surrogate Court letters of administration for an estate of trifling amount can be obtained at a nominal charge, we believe $2.

Accounts in the Names of Minors.

Question 399.—What is the Ontario law relating to money deposited by minors?

(2) Which would you advise—the opening of a savings banks account in the name of a minor, or in the name of a parent or guardian in trust for the minor?

Answer.—There is no general law in Ontario respecting money deposited by minors, but under the terms of sec. 84 of the Bank Act, banks may receive deposits from minors, and repay them to the minors at any time. (See the section referred to, and note the limitations where a minor could not, except for the section, make deposits.)

(2) Notwithstanding the authority given by the Act, we would think it prudent to take a deposit in the name of a parent or guardian in trust for a minor, rather than directly in the name of the minor. This, however, would apply only in cases where the minor is quite young.

Power of Attorney to a Minor.

Question 400.—May one under age be lawfully appointed the attorney of a merchant to conduct his bank account?

Answer.—Yes; the fact that he is under age does not disqualify him.

Money Found in the Public Department of a Bank.

Question 401.—A small sum has been found on the floor of the bank outside the counter. The party finding it has handed it to the manager, stating that he will consider himself entitled to the money in the event of its being unclaimed. Has he a legal right to it or should the money be retained by the bank?

Answer.—The money should be returned to the finder unless the true owner turns up.

Delivery of Money Parcel Tendered after Banking Hours.

Question 402.—The agent of an express company, with which a special contract exists, brings to the bank office at 5 p.m. a parcel of money, and requests the one officer whom he finds there, to take delivery. This is declined as the safe (which has a time lock) is closed. Is the express company relieved from liability because of this tender of delivery?

Answer.—When the company makes a tender of delivery at the proper time, in a proper place, to a proper officer of the bank, in accordance with the terms of the special contract, its liability under that contract would probably be no longer in force, and the company would only be liable thereafter for the ordinary care of a bailee. We do not think, however, that a tender of delivery such as that described comes within the above conditions, and we are of opinion the company's liability continues as if the tender had not been made.

Money Parcel Receipted for by Express Agent in Bank's Own Office.

Question 403.—If a parcel of money is receipted for by the local agent of an express company in a bank's own office would the express company be legally responsible for the loss if the money should be lost or stolen while being conveyed by the local agent from the bank to his own office? No special authority from the express company is held authorizing the local agent to call at the bank and receipt for such parcels.

Answer.—Without being advised of the extent of the local agent's authority and the regular course of dealing, knowledge of which could be brought home to the company, it is impossible to express an opinion as to the liability of the company under the circumstances stated in the question. If it was beyond the scope of the agent's authority the company is not liable. The answer to the question would depend upon the course of dealing between the bank and the company, and upon the real authority of the agent, or upon the authority which it might be held the company had held out as possessed by him.

Prefix "Mrs." to a Signature.

Question 404.—Does the word "Mrs.," placed before a woman's signature as an endorsement, invalidate it in any way?

Answer.—No. The sole question in all cases is that of identity, and assuming that the name with "Mrs." prefixed

is written by the payee of the cheque, the endorsement is valid.

Question 405.—It is essential under the provisions of the Ontario Act to make better provision for the keeping and auditing of municipal and school accounts, that the treasurer of a municipality should keep the municipal account at a chartered bank; and is it obligatory on his part to pass all transactions through the account?

Answer.—The Ontario Statute respecting Municipal and School Accounts (60 Viet. cap. 48), recognizes, by section 20, the deposit of municipal funds in chartered banks, private banks and companies.

We are not aware that there is any legislation making it obligatory on the part of the treasurer to pass all transactions through the bank account.

BORROWING POWERS OF ONTARIO MUNICIPALITIES.

Question 406.—Which of the items in the appended abstract of expenditure of a township would be classed under the head of "ordinary current expenditure" for the purpose of determining the borrowing powers of the municipality, and what amount could the township legally borrow under these conditions?

Abstract of expenditure from 1st Jan. to 31st Dec., 1900.

Officers' salaries	$1,000
Stationery and printing	100
Roads and bridges	1,500
County rates	1,200
School purposes	4,000
Debentures redeemed	2,000
Loans and notes paid	5,000
Drainage account	600
Drains (for which de[illegible]tures were sold)	2,000
Sundry items	900

Answer.—There is no judicial decision on the question involved which gives any definition of the words "current

expenditure." The word "ordinary" does not appear in sub-section 1 of section 435 of the Municipal Act by which the authority to borrow "to meet the then current expenditure of the corporation" is given. Sub-section 2 was added five years later, and limits the amount to be borrowed to "80 per cent. of the amount collected as taxes to pay the ordinary current expenditure of the municipality in the preceding municipal year. The word "ordinary" is here introduced, and the effect seems to be that under sub-section 1 "current expenditure" would include all expenditure which the corporation has to meet during the year until the taxes levied therefor can be collected, no matter whether such expenditure is "ordinary" or not; whereas in calculating the amount which sub-section 2 authorizes, regard must be had to the actual results of the preceding year. The "ordinary" current expenditure of that year must be ascertained and also the amount actually collected as taxes to pay such ordinary current expenditure, and only 80 per cent. of this latter amount can be borrowed, no matter what the "current expenditure" of the current year may be. It is evident that no proper comprehensive definition of "ordinary current expenditure" can be given. Most of the items included in it would not be disputed by anyone, and whether the dividing line is reached or overstepped would be a question to be determined on the facts of each case, and it would therefore serve no useful purpose for us to express an opinion upon what might be considered doubtful items, except to say that the maxim "when in doubt, don't" may well be followed here.

Powers of Quebec Municipalities to Tax Banks.

Question 407.—Has a town corporation in the Province of Quebec power to levy a business tax on banks?

Answer.—We are advised that the Municipal Act of the Province of Quebec does not give town corporations power to impose a business tax on banks, and that if there is no reference to such a right in the town's charter, authority would have to be obtained from the Legislature.

CHEQUE ISSUED BY TREASURER OF A MUNICIPALITY—INSTRUCTIONS TO STOP PAYMENT GIVEN BY A COUNCILLOR.

Question 408.—An account is passed by a town council and a cheque issued in regular form. Before presentation, the bank receives verbal instructions from one of the councillors to stop payment of the cheque, and subsequently, similar instructions purporting to come from the town treasurer are received by telephone. On presentation of the cheque for payment, the treasurer is called up by telephone and denies having given any instructions regarding the cheque. Would not the bank incur liability for damages if payment were refused, there being sufficient funds at credit of the account?

Answer.—A municipal councillor has no authority to countermand payment of cheques issued by the treasurer of a municipality, and if his instructions were acted upon without reference to the treasurer it is possible that the bank would be liable in any action by the corporation for damages, although this liability would not be a serious matter if it could be shown that the bank had taken precautions to safeguard its customer's interests. Proper precaution would, we think, involve in the case instanced an immediate communication with the treasurer on receipt of the councillor's message, or, if this was not done, confirmation by letter of the telephone message purporting to come from the treasurer.

NEGLIGENT PERSONS—HOW THEY SHOULD BE DEALT WITH.

Question 409.—What is the best way to deal with parties who are negligent about business matters and never accept drafts in required time—who never attend to their notes when due until told on day of maturity, and frequently refuse drafts upon the most paltry pretences?

Answer.—Indulgent treatment and reasonable remonstrances never appear to effect any improvement in the business habits of such persons, and the only way to deal

with them is to enforce the rules. This may, and probably will cause trouble, but it is the right thing to do, and if fair warning is given and any show of temper or discourtesy is avoided on the part of the bank, it will also prove the best thing to do.

Negotiable Instruments—Form.

Question 410.—(1) Is a document in the following form a negotiable instrument?

> "Upon being endorsed by the secretary or president "of the M — Agricultural Society this order shall be "good to the bearer for three dollars, which is given as "a special prize to be awarded at their annual exhibi- "tion, Fall of 1901."
>
> (Signed) A.B.

(2) If specially endorsed to C.D., is it then payable to bearer or to the order of C.D.?

Answer.—(1) We think that the terms in which the promise to pay is expressed are consistent with the requirements of a promissory note; but the provision that it must be endorsed by an officer of the Society before being good to the bearer makes it conditional. It is therefore not a promissory note and not negotiable in the proper sense.

(2) The effect of an endorsement on an instrument of this kind is, of course, not governed by the Bills of Exchange Act, and any party handling it would have to take the chances of the endorsement proving a sufficient assignment.

Referred to Elsewhere.

Question 411.—A paper dated at St. John signed by a person residing at a distance, and made in the form of a cheque, but having the name of the bank upon which it is drawn, erased, is received by a bank from an outside correspondent.

(*a*) What is the legal nature of such a paper?
(*b*) To whom and where must it be presented?
(*c*) Is it protestable?
(*d*) Does it amount to anything more than an I. O. U.?

Answer.—From a banker's standpoint it is a non-negotiable instrument, and should be treated accordingly.

Cheque on an American Bank "Payable in New York Exchange."

Question 412.—The A Co. and the B Co., the first having headquarters in Canada, the latter in the United States, are really one and the same corporation, with the same shareholders, officers, and directors, acting on each side of the boundary line under different charters. The A Co. keep an account with us.

On 30 Jan[illegible] the A Co. deposited with us a cheque for $2,500 drawn on an American bank in G., by the B Co., which cheque was made "payable in New York exchange." We mailed this on same day to our agents in G., but as there was no mail out until Monday, 1st February, it did not reach them until 3rd. The cheque was presented and a New York draft of the American bank given in payment. The draft was immediately forwarded to New York, but before payment could be obtained the American bank suspended. The draft was then returned to our agents, forwarded by them to us, and charged by us to the A Co.'s account. The company's manager objected to this course, claiming that the American bank had paid the cheque, and that therefore the company were no longer liable to us. What are our rights?

Answer.—We find it difficult to answer this question definitely, since the item to which the enquiry relates, which is drawn in, and payable in the United States, is by its terms made payable in New York exchange. We do not know what the precise effect of this condition is, but we should take it to mean that the document is not, properly speaking, a cheque at all, as it is not an order for the payment of money, but an order for the delivery to the party named of a draft on New York. Under our law the item would therefore probably not come within the Bill of Exchange Act. If it were payable "with exchange on New York," that would imply payment in money with a certain allowance for the

difference in the exchange between the point where it is payable and New York, and such a cheque is especially brought within the Bills of Exchange Act by sec. 9 (d).

Assuming that what we have said as to the nature of the document is correct, we should suppose that you have no remedy against anybody except the failed bank.

It seems to us quite clear that recovery cannot be had from the customer. You gave him value for an order on an American bank, which order the latter bank literally complied with; that is, they delivered to your agent a draft on New York, which the latter accepted, apparently without any reservation, in satisfaction of the order or cheque.

The only party against whom you could have any claim whatever would seem to be your agents at G., and from the information furnished in the question we think that you would have no claim on them, for the course of your business with them, as suggested in the enquiry, indicated that they were authorized—by implication if not expressly—to take payment of such items in drafts of the drawee bank on their New York bankers. If so, they performed their duty as agents fully, and are under no responsibility. If, however, in accepting the draft of the American bank, which was dishonoured, they did something that you did not authorize them to do, they might be responsible. The [illegible] which the cheque is made payable would, however, seem to us to be against this.

The question is not affected in any way by the fact that the drawers of the cheque and the customers from whom you received it, are corporations owned by identically the same shareholders. This does not make them any the less distinct corporate bodies in the eyes of the law.

Your rights against the failed bank and the drawer of the cheque would be governed by the laws of the State in which the failed bank is domiciled and they might give you a better claim than would exist here. On that point we cannot advise.

Notarial Charges.

Question 413.—Can you inform me what the legal notarial charges are in connection with the protesting of notes in the various provinces? There seems to be a wide range of difference among them.

Answer.—The tariff of notarial charges in the various provinces will be found in Maclaren's "Bills, Notes and Cheques," pp. 426, 427 and 428. They are too voluminous to be quoted here.

Note Bearing Interest from Date of Note "till Paid" —Rate Collectible after Maturity.

Question 414.—Referring to your answer to Question 451, I have read a decision of the courts to the effect that the words "until paid" as written in the note in question implies maturity. If so, and it was the intention that the note bear interest, at other than the legal rate, after maturity, it would be necessary to so make it read.

If I am right your answer to this question might be misleading.

Answer.—Doubtless the cases to which you refer as to the effect of the words "until paid," are: St. John v. Rykert, 10 Supreme Court Reports, 278, and People's Loan v. Grant, 18 Supreme Court Reports, 262. These cases were not overlooked when the answer to Question 151 was framed. It did not seem to us that the words "until paid" would be misleading, because they would no doubt be taken to have what has been held to be their true effect. Moreover, it did not seem to us that the question was directed in any way to the significance of these words. It was asked whether there was any legal objection to a note drawn in the form in question. The presence of the words "until paid," clearly constitutes no legal objection whatever. The note with these words is perfectly valid and effectual and the courts would give to these words their full significance and effect. How they should be properly construed is another question upon which the two cases above referred to are instructive.

PROMISSORY NOTE CONTAINING PLEDGE OF SECURITY, ETC.

Question 415.—Would an instrument drawn in the form following be judged a valid promissory note in Canada, or would the pledge of collateral security included in the note bring it under decision rendered in Kirkwood v. Smith et al., cited in your January number? Also please state, if it is not a negotiable promissory note, whether a note drawn in this form would be perfectly binding as a contract between the bank and the promissors.

after date I promise to pay to the order of at the Bank, . for value received, with interest at the rate of per cent. per annum. Having deposited with the Bank, as collateral security for the payment of this note and any other indebtedness due, or to become due, from to said bank or its assigns, I hereby authorize the sale of said security at public or private sale or otherwise, and with or without notice, on the non-performance of this promise (and said bank may become the purchaser thereof), and it is hereby agreed that if said security, in the opinion of said bank or of any of its officers, shall depreciate in value, said Bank or any of its officers or assigns, may elect, without notice, that this obligation is due and payable on demand.

(It is further agreed that said bank shall have the right to hold and apply, at any time, its own indebtedness or liability to the maker hereof, as security for the payment of any liability due, or to become due, from the maker hereof).

Answer.—We think the form of note which you send would be held not a promissory note, under the decision in Kirkwood v. Smith. It is, however, a contract which would be binding between the bank and the parties.

The points in it which, in our opinion, bring it within the judgment referred to, are the inclusion of the provision that the bank may become the purchasers of the property, and of the agreement as to set off, etc. Both of these are clearly additions to what sec. 82 of the Act permits.

The provision as to the note becoming payable on demand under certain conditions, is also probably an addition not admissible in a promissory note, although this point may be open to question. There is no objection to including in a note any means for determining its date of maturity which complies with the Act, but we doubt whether the action of the payee, which is to be based on an opinion as to the depreciation in the value of the security, would be within the limits of what the law permits.

We might add that if the contract as to security were made separate from the promissory note—for instance, if the promise to pay were followed by the party's signature, and the contract which you have in your present form printed below the note and signed separately, so that you had two complete documents on the one page—you would probably accomplish all that you desire, and at the same time have a note which would be a negotiable instrument.

Note Crossed "Given for a Patent Right" and Payable at the Office of Maker's Bankers.

Question 416.—Is a bank justified in charging to a customer's account a note of that customer which is crossed "given for a patent right," and is made payable at such bank; or would the bank incur liability in refusing payment of such a note, there being sufficient funds at the customer's credit at the time the note was presented?

Answer.—The bank would be perfectly justified in paying the note, but would not be bound to do so as between itself and customer, and would incur no liability in refusing to pay it.

Note Dated on Sunday.

Question 417.—"A contract made on Sunday is void." Supposing a note dated on Sunday falling due is not paid, can the maker release himself of the obligation—or if the owner could prove by witness that it was done in error, would it bind him to pay it?

Answer.—It is not quite true to say literally that "a contract made on Sunday is void." Certain contracts so made are void (see, e.g., the "Lord's Day Act" as to the law in Ontario). The Bills of Exchange Act expressly declares that a note is not invalid because dated on Sunday, and a holder in due course need not trouble himself on this point at all. The maker might possibly defend an action brought by the party to whom he gave a note dated on Sunday on the ground that the sale for which the note was given was void because made on Sunday, if that were the fact, and that, therefore, as between himself and the payee, the note was not good for want of consideration. But such a defence would not be good against a third party holding for value.

Demand Note with an Endorser Held as Collateral Security.

Question 418.—Under section 85 of Bills of Exchange Act it is provided that where a note payable on demand has been endorsed, and with the assent of the endorser delivered as a collateral or continuing security, it need not be presented for payment so long as it is held as security. Must this assent be in writing, or may it be by verbal understanding?

Answer.—The assent may be written or verbal, but the latter would be open to practical objections in cases where the facts admitted of difference of opinion or dispute.

Note Drawn to Maker's Own Order and Endorsed by Him.

Question 419.—Is there any objection to notes being made payable to the order of the maker and endorsed by him instead of being made payable to the party to whom they are given?

Answer.—There is no objection whatever to notes being made payable to the maker and endorsed by him. Our correspondent has reference to the objections taken to notes being made payable to the bank.

PROMISSORY NOTE—EFFECT WHEN MADE PAYABLE "WITH BANK CHARGES."

Question 420.—Is it proper to make payable "with interest" or "with bank charges"?

Answer.—We doubt if a note drawn "with bank charges" is a promissory note within the Act. A note "with interest" is, and this form is certainly preferable. If it is intended to add more than the interest to the note, the amount should be ascertained and this included in the amount of the note.

NOTE ENDORSED BY B "WITHOUT RECOURSE" — SUIT BROUGHT IN NAME OF B BY SUBSEQUENT HOLDER.

Question 421.—A gives note to B, who endorses "without recourse" and passes same to C for value received. C sues in name of B without being a party to suit. Can B legally recover amount of note?

Answer.—B is not the holder of the note. Having endorsed without recourse, he is not liable upon it. He has no interest in it. He has not possession of it. The action brought by C in the name of B is wrongly constituted, and should not succeed.

THE MAKER OF AN ENDORSED NOTE ASSIGNS HIS ESTATE FOR THE BENEFIT OF CREDITORS—SHOULD THE NOTE BE PROTESTED WITHOUT WAITING FOR MATURITY?

Question 422.—The maker of a note (discounted for a customer-payee) becomes insolvent. The note is not yet due, and has another endorser who has lent his name as surety for the maker. Should the note be protested as soon as the assignment is gazetted? Or should no action be taken till maturity?

Answer.—Nothing can be done until the note matures and is dishonoured.

ENDORSED NOTE LOST IN THE MAILS AND NOT PRESENTED FOR PAYMENT ON DATE OF MATURITY.

Question 423.—A customer deposits with the bank a note for collection, on which there is a good endorser. The note is payable at a distant point, and when deposited for collection has still two months to run. The bank forwards it at once to its agents for collection, but on inquiry ten days after maturity of the note they find that their letter had never been received. The makers of the note are worthless. Was not the endorser discharged for want of notice, and would not the bank be responsible for neglect in not looking for an acknowledgment of the letter?

Answer.—Unless there were some exceptional circumstances connected with the case, any responsibility for the loss of the bill in the mails must fall on the bank. The liability of the endorser, however, would be preserved, if when the cause of delay ceases to operate, even although the note were ten days overdue, presentment be made with reasonable diligence and notice of dishonour sent. Section 46 of the Bills of Exchange Act excuses delay in presentation when "caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence." We think that the bank's neglect to see that the letter was acknowledged was not negligence within this section, and that the delay was beyond its control. There appear to be no English cases covering the point, but there are some American cases in which it was held that delay in the post office, when a bill is mailed in good time, is a valid excuse for delay in presentation.

NOTE ENDORSED BY B WITH WAIVER OF PROTEST PAID BY B AT MATURITY, MARKED "PAID" BY HOLDER, AND AFTERWARDS RE-CIRCULATED BY B.

Question 424.—A makes note in favour of B. B endorses same and waives protest, etc. At maturity B. has to pay note and the bank places their "paid" stamp on the back of the note over B's endorsement. B afterwards circulated

the note apparently as cash, and eventually (three or four years after maturity) has been called upon to pay same but refuses. Is he still liable as endorser?

Answer.—The payment by B is not a payment of the note so as to extinguish all liability upon it, and evidence would be admissible to show that the stamp "paid" meant paid or retired by the endorser only. If B himself, as the question states, afterwards negotiated the note, there could be no question that he would be liable as endorser, but the holder would of course take it subject to the equities which might attach to the note as an overdue note when he became the holder. See section 36, sub-section 2, and section 37 of the Bills of Exchange Act.

Note Form with Engraved Figures "189 "—Alteration to 1900.

Question 425.—We have a number of note forms with the figures 189 printed on them. Would you consider the initials of the parties necessary if these figures were struck out and 1900 substituted?

Answer.—We think that initials are unnecessary, as the circumstances show that 1900 is the true date.

Note Held as Collateral Allowed to Run Past Due without Notice to Endorser.

Question 426.—Is a bank responsible for a note deposited with it as collateral if it (having an endorser) is allowed to run past due without the endorser being notified of dishonour, or allowed to become outlawed by no action being taken for six years?

Answer.—As holder of the collateral security the bank is bound to exercise reasonable care in reference to it, and to the realization of it. Therefore if, by reason of its neglect to notify the endorser, or to get judgment on the note before it became outlawed, the debtor to the bank, or true owner of the note, suffered damage, the bank would be responsible. If the bank were willing to sue on the note before it became

outlawed provided the debtor furnished the money required for costs, and if the debtor refused to do this the bank would not be bound to sue, but the debtor should be given an opportunity of protecting his interest in the note.

Note Drawn in Favour of a Bank with no Place of Payment Specified.

Question 427.—A joint and several note made by three parties is drawn in favour of a bank, but there are no words indicating that it is payable to its order or to bearer. The note is dated at the place where issued, but no place of payment is specified in it.

In the event of the bank having to sue the parties, is its position quite as good as if the note had been made payable at its office, and to its order?

Answer.—The bank is under no disadvantage as regards the place of payment, except in respect to the matters mentioned in sec. 86 of the Act, and this can be obviated by presenting the bill, at any time before proceedings are taken, to each of the promissors.

The point as to the omission of the words "or order" or "or bearer" is not material. Under sec 8, sub-sec. 4, a note drawn as above described is payable to order.

Joint and Several Note Charged after Maturity to the Account of One of the Makers—Rates of Interest Chargeable for the Time Overdue.

Question 428.—A and B are liable jointly and severally on a note which has been discounted by the bank, B being, in effect, a surety only. The note is unpaid, and some time after maturity the bank charges it to B's account, who has had a balance with them at all times exceeding the amount of the note. Can they charge him with the full rate of interest, or only such a rate as they allowed on his deposit?

Answer.—The bank is entitled to collect the full amount of the note and interest until it is paid by the parties, or either of them, or until the bank chooses to charge it against

B's account. In the Province of Ontario the bank has a right of set off, but is not bound to exercise it, and pending its exercise the deposit on the one hand and the note on the other, remain as two separate liabilities, each carrying its own results as to interest, etc. The law in Quebec as to set off differs somewhat from that in Ontario, and what we have said above might not apply there.

Joint and Several Note Payable "within 30 Days of Demand of Payment."

Question 429.—Is there any legal objection to a note drawn in the following form:

Within 30 days after demand of payment for value received we jointly and severally promise to pay.....with interest at the rate of....per cent. per annum from date until paid.

Answer.—No.

Joint and Several Note Presented at the Bank where it is Payable, and where One of the Promissors Has an Account in Funds.

Question 430.—A joint and several promissory note made by three parties is presented at maturity at the bank where it is payable and where one of the parties has an account with sufficient funds at credit to cover the note. Should the bank pay the note and charge it to his current account?

Answer.—We think the bank ought not to pay the note on a customer's account without his instructions.

Joint and Several Promissory Note—Right of a Bank as Holder to Charge to Account of One of the Promissors.

Question 431.—A bank holds the joint and several note of A, B & C payable on demand. Demand is made and the note dishonoured. Can the bank charge up this note to A's account, against A's wish, assuming that it is in funds?

Answer.—A dishonoured bill on which a bank's customer is severally liable can of course be charged against his account with the bank.

NOTE MADE BY A FIRM AND GUARANTEED OR ENDORSED BY THE INDIVIDUAL PARTNERS, OR VICE VERSA.

Question 432.—A bank has discounted for a firm a note made by the individual partners and endorsed by the firm. The firm and the individual partners subsequently make assignments under the Ontario Statute in that behalf.

1. Will the bank's claim rank on the separate estate of the partners in preference to the other creditors of the firm holding the firm's name only?

2. Would the position be the same if the bank held the firm's note guaranteed by the individual partners?

Answer.—1. Yes. 2. The same results would follow in this case.

AUTHORITY OF AN EXECUTOR TO GIVE A RENEWAL OF A NOTE MADE BY THE TESTATOR.

Question 433.—The executor of an estate endorses, "Estate of C. B. by A. D. executor," on renewal of a note current during the lifetime of the testator. Has he as executor a right to bind the estate in this way?

Answer.—If this were to be regarded as a new contract of endorsement, the executor's authority would depend on the terms of the will, and it would probably be found that he had no authority to bind the estate in this way. Regarded, however, as an extension of the obligation created by the testator, we think that it would be held good, and the original liability of the estate would be continued.

"NO PROTEST" INSTRUCTIONS IN LETTER ENCLOSING A NOTE, BUT NOT ATTACHED TO NOTE ITSELF.

Question 434.—A letter is sent containing a promissory note for collection, with instructions not to protest, but such

instructions are not attached to the note. Should the latter be protested or not?

Answer.—The instructions in the letter should clearly be followed. There can be no doubt whatever as to the intention of the party sending the note when he gives his instructions in this shape.

Our reason for suggesting that precaution should be taken where the instructions were only in the form of a slip attached was the possibility that a slip belonging to some other bill might have been attached in error. The collecting bank in such a case would be free from responsibility and the precaution would be merely an act of consideration.

Promissory Note. Not Always Discharged by the Surety's Payment thereof.

Question 435.—A joint and several promissory note is made by three promissors, one signing as surety, the other two being the debtors. The surety has to pay the note; can he not recover from either of the other promissors?

Answer.—We think that under the circumstances mentioned he is entitled to bring suit against either of the other promissors on the theory that as he was surety for their joint and several debt, which he has had to pay, they must jointly or severally reimburse him.

Where there is in force an Act similar to "The Mercantile Amendment Act" of Ontario, the surety in such a case gets all the rights of the prior holders against those who ought to pay the note, and the note is not to be deemed to be discharged by the surety's payment. (See section 1, cap. 145, Rev. Stats. Ont.) In the absence of statutory provision of this kind the promissors, even if he was in reality a surety only, and his remedy would not be on the note, but would rest on the common law respecting sureties.

Claim on Estate for Paper Endorsed by Insolvent.

Question 436.—A bank holds business paper endorsed by and discounted for a customer who has assigned. The

paper will probably all be paid, although the parties may ask some renewals. Should the bank treat its claim as fully secured, and not rank on the estate, or should it rank and put a value on the security?

The assignee might take the security over at an advance of 10 per cent. on the valuation, and this, while it might prove advantageous to the bank if the notes were not all good, would be the reverse if they were ultimately paid in full.

Answer.—The question involved is purely one of expediency. The bank should certainly get some dividend from the estate to hold as an indemnity against loss, although it would be bound to return it if the notes were ultimately paid in full by the promissors. Most banks would under the conditions described value their security at such an amount that if it were taken over by the assignee with ten per cent. added, their debt would be practically covered.

Promissor and Endorser both Bankrupt—Right of Holder to Rank on their Estates.

Question 437.—A and B are holders of a note, the promissor and endorser on which are both bankrupt. After a lapse of time each estate pays a dividend (or arranges a compromise) of sixty cents on the dollar. Can A and B prove for interest to date of payment, or can they, after collecting sixty cents from one estate, collect more than forty cents (or as much more as will pay principal and interest in full) from the other?

Answer.—In making up claims to be filed with an assignee in bankruptcy the rule is to compute interest to the date of the assignment, the reason for this being that the property is assigned in trust to pay the obligations to the debtor existing at the date of the assignment.

As regards the holder's rights against the different parties, he is entitled, as holder, to recover from the promissor the full amount of the note with interest to date of payment, notwithstanding that he has received a part from

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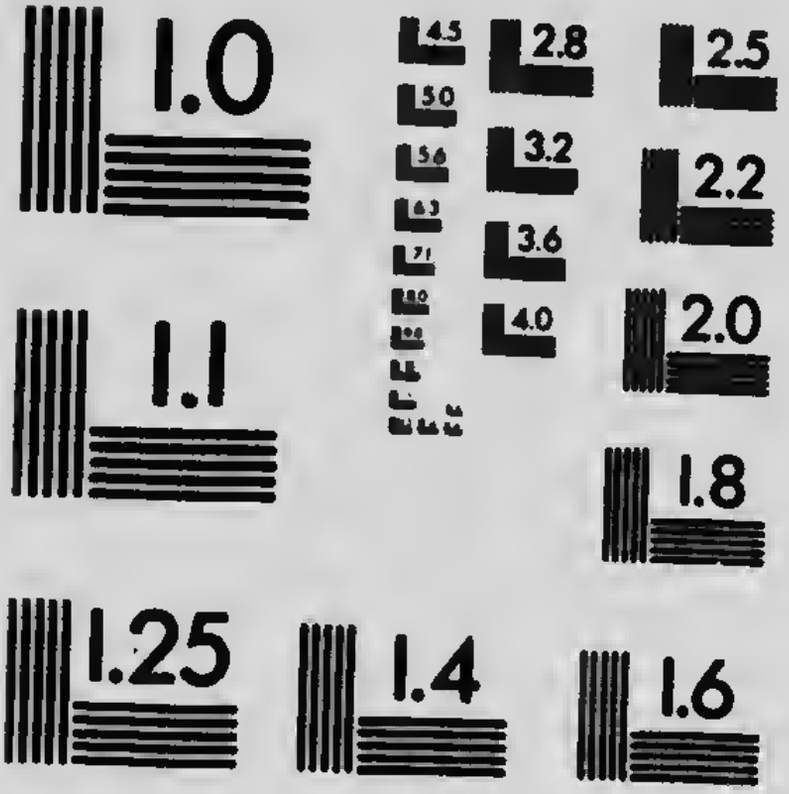

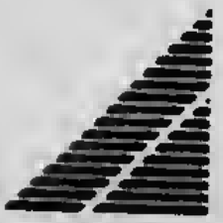

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the endorser, but if he receives more than one hundred cents on the dollar and interest he becomes a trustee as to the excess for the endorser or other parties concerned. After he has collected from the promissor's estate all that it will pay, his dividend from the endorser's estate cannot exceed the balance of his claim and interest. If he has received the endorser's dividend first, and the dividend from the promissor's estate overpays him, he must pay back the excess to the endorser's estate. If he only collects enough from the promissor's estate to pay his claim in full after applying what he has received from the endorser's estate, the latter would be entitled to the balance of the dividend, if any, from the promissor.

We assume that as between the promissor and endorser the note under consideration is one which the former ought to pay; also that there is no Bankruptcy Act in force containing provisions which would conflict with the views expressed.

On the question of collecting interest from the endorser's estate, the dividend on which would pay balance of principal and interest in full, we think that the claim must be regarded as one against the endorser, for which the claim on the promissor is the security, and that whatever is recovered from the security may be applied, so far as the claim on the endorser goes, first to interest and then to principal, leaving the endorser liable for the balance. This in effect gives a claim for payment of principal and interest in full, when the dividends, as in the case you mention, would more than cover the debt in full.

The question mentions a compromise, as to which it is to be noted that the acceptance of a composition from the promissor, coupled with his discharge, might discharge the endorser from liability as well, if his consent were not obtained, or if the rights against him were not reserved.

Past-Due Note with Two Promissors Held as Collateral to a Renewal Note Taken from One of Them.

Question 438.—A note was discounted by a bank on which were two joint promissors, one of the two, to the know-

ledge of the bank, having added his name as surety for the other. At maturity the bank renewed the bill for the debtor, taking a note signed by himself alone, but retaining the original note as collateral security. This was done without notice to the guarantor. Is the latter released by this extension of time?

Answer.—The position of the parties in a case of this kind was fully discussed in the judgment of the Supreme Court of Canada in Gorman v. Dixon, reported at page 418, Vol. 111 of the Journal. The whole question involved in the present case is whether there was an understanding between the bank and the debtor that, notwithstanding the time given, the bank's claim against the surety was to be retained. The fact of the retention of the joint note seems to indicate this, and if such were the understanding Smith would, under the ruling in the case referred to, still remain liable.

NOTE PAYABLE AT A BRANCH BANK—BRANCH CLOSED AND BUSINESS TRANSFERRED ELSEWHERE—PRESENTMENT.

Question 439.—A note is payable at a branch of a bank at A., but after the making and before it is due, the branch at A. is closed and the books and business are transferred to B., at the branch of the same bank there, and the makers and endorsers know this. Presentation is made at the branch at B., and not to the makers and endorsers personally. Is this good, and, if so, how should notice of dishonour be worded to suit change?

Answer.—Such a presentation is not good.

NOTE PAYABLE AT PAYEE'S OFFICE—DEATH OF PAYEE.

Question 440.—A note is made to read as follows: "I promise to pay AB or order at his office, etc." AB endorses the note and has it discounted. Before it is due AB dies and his office is closed up. Where must the note be presented for payment in order to hold AB's estate on his endorsement?

Answer.—The note must be presented at AB's former office, and if refused or there is no one there to answer, it should be protested. See sec. 45, sub-sec. 3.

NOTE PAYABLE "ON OR BEFORE" 1ST JULY.

Question 441.—Would a promissory note made payable "on or before 1st July" come within the terms of the Bills of Exchange Act?

Answer.—We think such a note is "payable at a determinable future time, within the meaning of the Act," and that it therefore comes within its terms. The case of De Braam v. Ford, threw some doubt on this, but the judgment of the Court of Appeal in the same case clears the matter up.

NOTE NOT PAYABLE TO "ORDER" OR "BEARER."

Question 442.—A note is drawn payable to "John Jones" simply, the words "order" or "bearer" being omitted. Is such a note negotiable? Does the same rule apply to a cheque?

Answer.—A bill or cheque so drawn is payable to "order" (sub-sec. 4, sec. 8, Bills of Exchange Act).

NOTE WITH ENDORSEMENT OF THIRD PARTY PLACED THEREON BEFORE ENDORSEMENT OF PAYEE — LIABILITY OF FORMER TO HOLDER IN DUE COURSE.

Question 443.—A promissory note has been endorsed by John Smith before John Brown, the payee, has endorsed it. Subsequently the payee endorses it. Can John Smith be made liable as an endorser or otherwise by a *bona fide* holder for value?

Answer.—We think that Smith would be liable to a holder in due course. The point is substantially the same as that dealt with by the Ontario Court of Appeal in Duthie v. Essery, reported at page 205, Volume 111, of the Journal.

NOTE PAYABLE WITH BANK INTEREST.

Question 444.—Please inform me if a note drawn payable with bank interest is strictly correct? Would you con-

sider the fact of its being drawn with bank interest as throwing any doubt as to the sum payable, and would you consider such a note as coming strictly within the interpretation of the Bills of Exchange Act?

Answer.—While more desirable to have the rate of interest mentioned, I think the words "bank interest" will not destroy the negotiability of the note. It is no more indefinite than the terms "with exchange" or "with costs of collection."

Note Payable with Interest—Failure of Bank to Collect Interest.

Question 445.—A teller in a bank takes from a customer some notes for collection and at his request initials the passbook by way of receipt for the same. The notes are handed over to the collection clerk, who puts them through and in turn he gives them to the accountant to check. One note bears interest at six per cent. The collection clerk does not add the interest to the face of the note, and enters it in the diary for the face amount, the entry being checked by the accountant. On the day of maturity the teller initials for the note in the diary and accepts the face amount, placing the money to the payee's credit. Eight months after the payment of the note the payee claims that the interest should have been credited to him and demands the amount. The note is in the promissor's possession, who cannot be found.

At such a late day can the customer demand interest, and has he not to prove that the note bore interest, our books not showing that it did?

Who would be responsible for the amount as among the clerks, the teller or accountant, or should each bear a share?

Answer.—We think that the bank is undoubtedly responsible to the owner of the note for the amount short collected, if, as a matter of fact, the note was payable with interest. The owner must of course prove this fact before the bank could be called on to pay.

As among the clerks it is somewhat difficult to fix the responsibility for the oversight. We would think, however, that it must chiefly rest on the teller. He was handed the voucher, and when he took payment had the document itself on the counter and should have collected the amount according to its terms. We do not think the collection clerk who entered the bill, or the accountant who passed the entry, can be held responsible, although as a matter of fair dealing it must be said that they helped to lead the teller into the mistake.

Note Past Due—Right of Holder to Interest if not Mentioned in the Note.

Question 446.—Can interest be legally collected on a promissory note after note becomes due, no mention of interest having been made on note, said note six months overdue?

Answer.—Under section 57, Bills of Exchange Act, such a note, if dishonoured, bears interest from the date of maturity.

Renewal of a Note without the Surrender of the Original.

Question 447.—John Smith and Henry Jones are promissors on a note. At maturity a renewal note is taken bearing John Smith's signature only, the old note being retained, however, uncancelled. John Smith fails before the renewal note matures. Can Henry Jones be held on the original note?

Answer.—Henry Jones could be sued for the debt, providing no questions of principal and surety came in. If the two parties to the original note were both principal debtors such an arrangement as you describe would not discharge either of them, and even if the one whose name was not on the renewal note was a surety his liability could be preserved by a suitable agreement. The law bearing on the matter is fully discussed in the case of Dixon v. Gorman, reported on page 118 of Vol. 111 of the Journal.

Renewal Note—Original Note Bearing an Endorsement Retained.

Question 448.—Would an insolvent's estate be discharged if a bank renewed a bill endorsed by the insolvent, taking the maker's own note and retaining and attaching thereto the original bill?

Answer.—The endorser would not be discharged under the circumstances mentioned in your question provided there was an understanding that the endorser's liability was to be reserved; the retention of the original bill indicates that there was such an understanding.

Note Bearing Accommodation Endorsements Renewed by a Bank with One Endorsement Omitted.

Question 449.—A bank discounted for the promissor a note with three endorsers (accommodation). When this note becomes due the bank receive through the mails a note stated to be a renewal note, but from which the signature of one endorser is absent. If the bank put this through (considering the signature of the missing endorser of little financial value), could the remaining endorsers claim release on the grounds that the bank had released without notice to them some of the security to the said note?

Answer.—Unless the bank had knowledge of an agreement between the endorsers that all were to join in the renewal, we think that the bank would be a holder in due course of the renewal note and entitled to recover.

Request for Payment of a Note Sent to the Maker in an Unsealed Envelope.

Question 450.—A bank notifies the promissor of a note held by it, requesting payment. The envelope containing the notice was not sealed. Can the party claim damages from the bank for the open letter?

Answer.—This gives the party no claim for damages, unless the statement in the notice is false and it is sent maliciously.

Note Signed by Two of Three Executors.

Question 451.—When there are three executors appointed to manage an estate, could any two of them, without consulting the third, make the estate responsible by attaching their names as makers or endorsers of a promissory note?

Answer.—If by "managing" an estate you mean that the executors have been given authority under the will to carry on business, the right of two out of three to bind the estate would depend entirely on the terms of the will.

Without special authority in the will the executors could not make the estate directly responsible for such obligations, even where they all act together. There may be cases, however, where the executors would be entitled to indemnity from the estate, thus making it directly responsible.

Note with Date and Place of Payment Blank.

Question 452.—If in a note the date and place of payment are omitted, may the holder insert them?

Answer.—It would be a material alteration within the terms of the Bills of Exchange Act for the holder of a note to insert the place of payment. See sub-sec. 2, sec. 63 of the Act.

As regards the insertion of a date, where the date has been omitted, the rights of the holder are governed by section 12 of the Act.

Promissory Note with Joint and Several Makers, One of the Makers Being really a Surety for the Other—Protest.

Question 453.—Is it necessary to protest a note drawn in favour of a bank by joint and several promissors, one of whom is really a surety for the other; is he not in effect an endorser?

Answer.—It is not necessary to protest such a note. The contract of the makers of a note is to pay the note without any conditions, and it is their duty to find it and pay

it. If a party promises to pay who is in fact a surety, his obligation is that of maker, so far as notice is concerned, but in other respects he is entitled to the rights of a surety; *e.g.*, he might be discharged by any improper dealing with securities.

PROMISSORY NOTE WITH A MEMORANDUM EMBODIED THEREIN, OF THE PURPOSE FOR WHICH IT WAS GIVEN—NEGOTIABILITY.

Question 454.—A promissory note bears (1) on one corner the words "To be used as collateral security."

(2) In the body the words "To cover 50 per cent. of my subscribed stock in the above company."

Do either of these affect the negotiability of the note?

Answer.—We think that this is a promissory note notwithstanding the inclusion of either or both these phrases.

NOTE WITH JOINT AND SEVERAL PROMISSORS, ONE BEING IN REALITY A SURETY, HELD OVERDUE.

Question 455.—B and C are joint and several promissors on a note held by A, it being known that C is in fact a surety, B being the real debtor. The note matures, and A accepts a year's interest in advance, and holds the note over. This is repeated until it has been held for four years. By this time B is insolvent, and the debt cannot be collected from him.

(1) Should the note have been protested to hold C?

(2) Is C discharged by reason of the note being held four years?

Answer.—(1) C is liable on the note without protest.

(2) From the circumstances mentioned we should think that C is not discharged as surety. C would be released if A, at the time of any interest payment, made a binding agreement with B to extend the time of payment for a year; and the acceptance of the year's interest in advance would certainly strengthen a claim made by B, that the holder had so bound himself that he could not sue till the year was out.

JOINT AND SEVERAL NOTE—MAKER'S RIGHT AS SURETY.

Question 456.—A, for B's accommodation, joins with the latter as joint and several maker of a note in favour of C. At the time of its delivery to C the latter has notice of the relation to which A and B stand to each other. B does not meet the note at maturity. Is it necessary in order that C may preserve his rights against A that A should have notice of dishonour?

Answer.—It is not necessary that A should have notice of dishonour in order to preserve C's right to recover from him. A has the ordinary rights of a surety, but not of an endorser, and his liability to pay the note continues without notice of dishonour, because he is a promissor thereon.

NOTE WITH TWO MAKERS, ONE BEING IN FACT A SURETY—RIGHT OF SURETY TO COMPEL SUIT.

Question 457.—C and Company hold a joint note of A and B, which is dishonoured. Can B, who is in fact a surety for A, compel the holders to sue A for the amount?

Answer.—Yes, if the holder will not accept the amount from the surety and put him in a position to sue the principal debtor, the surety can compel the holder to sue.

RENEWAL OF A JOINT AND SEVERAL NOTE, THE OLD NOTE BEING RETAINED.

Question 458.—A bank accepts a renewal of a joint and several note with one of the original names dropped, but retaining the original note. Further renewals of the same kind are afterwards taken. In the event of the bill being finally dishonoured, can the bank sue on the original bill?

Answer.—The answer depends on the intention of the parties, which is a question of fact. The fact that the bank retained the original note undischarged suggests that the parties intended that the bank's rights upon it should remain, and if there were nothing to displace this the finding would probably be in this direction; but these questions of

fact generally depend upon various surrounding circumstances, and each case must be judged by itself.

NOTE WITH JOINT AND SEVERAL MAKERS—ONE SIGNING FOR THE OTHER'S ACCOMMODATION.

Question 459.—A for B's accommodation joins with the latter as joint and several makers of a note in favour of C. At the time of its being negotiated to C, the latter has notice of the relation in which A and B stand to each other. B does not meet the note at maturity. Is it necessary in order that C may preserve his rights against A, that A should have notice of dishonour?

Answer.—It is not necessary that A should have notice of dishonour in order to preserve the holder's right to recover from him.

NOTE WITH TWO OR MORE ENDORSERS DISCOUNTED FOR THE LAST ENDORSER, WITH WAIVER OF PROTEST, ETC.

Question 460.—A note is discounted by a bank for a customer who endorses it, waiving protest, notice and demand of payment. There is a prior endorser on the note. The bank did not protest the note at maturity, and the first endorser was released. Is its claim against its customer good? He alleges that notwithstanding his waiver the bank should have protested the bill in order that he might not lose his recourse against the prior endorser, and that he is discharged by their neglect to do this.

Answer.—The customer by his waiver made himself liable to pay the note in the event of its dishonour without any conditions whatever, and this liability is not impaired in any way by the fact that the prior endorser has been discharged.

NOTE DELIVERED WITHOUT ENDORSEMENT.

Question 461.—(1) Is the maker of a note which is overdue protected in the payment of the same, to any one presenting it, upon having note delivered up to him without the endorsement of the payee?

(2) Can such possessor of a note (the note not having been endorsed over to him by pay-, he could not, I take it, be considered the holder in law), be he Tom, Dick or Harry, enforce payment by suit against the maker without obtaining the payee's endorsement?

Answer.—The question involved in each case is whether the party in possession of the note is the owner of the claim which it represents. He might become so by an assignment as well as by an endorsement, but unless he is able to show a good title to the note, he has no right to collect it or sue the maker, and if, as a matter of fact, he has not a good title, the maker would not be protected against the true owner if he paid the note.

NOTES AND CHEQUES OF A CUSTOMER CHARGED AT MATURITY TO HIS SAVINGS BANK ACCOUNT WITHOUT SPECIAL AUTHORITY.

Question 462.—Would a bank be upheld in law in charging up acceptances and notes as they mature to a customer's account in the savings department, without special authority. The following clause is printed on the customer's pass-book: "No draft or cheque drawn against the within deposit can be paid unless such draft or cheque be accompanied by this pass-book."

Answer.—If the bank were the holder of a note made by a party who had funds in a savings bank account, it would certainly be justified in charging the note against that account by way of set-off, but if the bank were not the holder of the note, and it is merely presented at the bank because made payable there, we think that the ordinary relation of banker and customer with respect to a current deposit account (which gives to bank implied authority to pay for the customer notes and acceptances which he has domiciled with it), would not apply to a savings bank account upon which the customer cannot, as a right, draw cheques in the ordinary way and which is not presumed to be used for payment of his notes and acceptances. Special authority from him would be required.

NOTE EMBODYING A CONTRACT RESPECTING SHARES LODGED AS SECURITY FOR PAYMENT.

Question 463.—Is the following a legal form of promissory note?

$3,000. Montreal, 31st October, 1899.

On demand for value received, I promise to pay to J. Richardson or order at the Merchants Bank of Canada here, three thousand dollars and interest at the rate of 6 per cent. per annum, having deposited with this obligation as collateral security 5,000 shares Payne Consolidated Mining Co., with authority to sell the same without notice, either at public or private sale, or otherwise, at the option of the holder or holders hereof on the non-performance of this promise, (he or they giving me credit for any balance of the net proceeds of such sale remaining, after paying all sums due from me to the said holders or holder, or to his or their order, and it is further agreed that the holder or holders hereof, may purchase at said sale). (Sgd.) A. McKay.

Answer.—It is of course quite lawful for the parties to make such a contract, but we understand the question is as to whether it is a note to which the Bills of Exchange Act would apply, and on this point we are of the opinion that it is not, for the reason that in addition to the inclusion of "a pledge of collateral security with authority to sell or depose thereof," which are permitted by the Act (section 82, sub-sec. 3), it contains other provisions, namely an assignment of the proceeds as security for other sums due to the holders of the note. There are other conditions in the form which might have the same effect, but the one specially mentioned clearly has.

NOTICE OF CUSTOMER'S DEATH.

Question 464.—Re sec. 74, Bills of Exchange Act: (1) What constitutes notice of a customer's death? (2) Would a bank be justified in refusing payment on the strength of one of its officers having heard of a customer's death?

Answer.—(1) Any information received by the bank from which the death of the customer may be fairly inferred, must be held to constitute notice of his death.

(2) Generally speaking, any information received by an officer of the bank which is within the conditions would not only justify the refusal of the cheque, but would put on the bank the burden of paying the cheque, if paid, at its own peril; i.e., if it should prove that the information is correct the bank would not have the right to charge the cheque to the customer's account.

Whether information which has reached any officer of the bank is to be regarded as knowledge on the part of the bank, would depend somewhat on the circumstances, the position of the officer, etc.

Death of a Customer—What Constitutes Notice.

Question 465.—If mention of the death of a customer appears in the daily papers, would this in itself constitute notice under sec. 74 of the Bills of Exchange Act? If the notice had not been observed by the bank, would it be affected thereby?

Answer.—If the information in the newspapers were true, and it came within the knowledge of the bank, it would no doubt be notice of the customer's death, and the bank would be bound not to pay the customer's cheques presented thereafter. The bank would not be bound by any information in the newspapers which had not come under its actual notice.

Time within which Notice of Dishonour May be Sent.

Question 466.—Referring to the section 49 Bills of Exchange Act, do notices of dishonour mailed at any time on the next day following due date, meet the requirements of the law as fully as if mailed on the same day a bill is dishonored?

Answer.—Yes; the notice is "valid and effectual" if mailed on the following business day, and all that is needed is a valid and effectual notice.

Notice of Dishonour.

Question 467.—Is it necessary, if a draft be drawn by A on B to the order of bank C, that notice of dishonour be given to the drawer to render him liable?

Answer.—Such a notice is necessary; see sec. 48 Bills of Exchange Act. Please note that protest is not necessary, except in the Province of Quebec, or for foreign bills. What the Act requires is notice of dishonour, which might be given either by a notary or by the holder of anyone on his behalf.

Notice of Dishonour Sent to Endorser by Letter.

Question 468.—Would notifying an endorser by registered letter that a note had not been met by his promissor and that he was looked to for payment, hold him the same as if the note had been duly protested?

Answer.—Any notice of dishonour properly given holds the endorsers, but in the case of bills payable in the Province of Quebec, and foreign bills, protest is necessary. All that is necessary in a notice of dishonour sent by mail is that it should be "duly addressed and posted" (see section 49 (15) Bills of Exchange Act); registering the letter does not affect the matter.

Notice of Dishonour—Makers of a Note Who Are also Endorsers.

Question 469.—Is it necessary to send notices of dishonour to the endorsers of a note on which they are also the promissors?

Answer.—They would be held as makers of the note without notice of dishonour. As no additional obligation is represented by the appearance of their name also as endorsers, nothing would be gained by the notification, from a legal standpoint.

Notice to Limited Company—"Ltd." Omitted from Address.

Question 470.—In sending a notice through the post to a "limited" company, would the omission of "Ltd." from the address on the envelope affect the legality of the notice?

Answer.—A notice addressed to a joint stock company, with the word "limited" omitted from the address, would nevertheless be a good notice.

Notice to Obligants on Discounted Paper.

Question 471.—It has becomes a custom of the banks in this Province (British Columbia) to send out notices of maturity to acceptors of drafts and makers of notes. Does this custom extend to bankers in other provinces? It seems to me that it is more or less unwarranted and should be unanimously discontinued, as it would be to the advantage of all banks in economy of labour and expense to do so.

Answer.—We believe that this is almost a universal practice, and it seems to have much to recommend it from all points of view. It no doubt involves considerable expense in the way of postage, etc., but as a stimulant to the payment of the bills and a protection against forgery, it seems to be geerally looked upon as worth all that it costs.

"Noting" Dishonoured Bills.

Question 472.—(1) A bank hand a dishonoured bill to their notary for noting pending an expected settlement in a few days. (a) Should notary attach long declaration of noting in accordance with Form A in the schedule to the Act, or simply endorse a memorandum of date and ledger-keeper's answer referred to in Smith's Merc. Law, 3rd Am. ed., p. 328? Maclaren, at p. 285, would suggest the short memo., but Smith says this "*per se* is of no legal effect." (b) In either case should notary send notices to the parties on the bill?

(2) Is there any sufficient sanction for the practice of protesting a bill before 10 a.m. of the day succeeding the day

of dishonour as of the day of dishonour? That is to say, noting and protesting it, the bank having, say, overlooked it the day before.

Answer.—(Not applicable in the Province of Quebec nor to foreign bills).

(4) We think it ought to be clearly understood that noting a dishonoured bill does not enable the bank to hold the parties to it liable pending an expected settlement in a few days. The parties are held liable only if notices of dishonour are sent in accordance with the provisions of the Act.

The practice in regard to "noting" usually amounts to the notary presenting the bill for payment on the day of maturity, and taking no further steps until the close of business the following day, by which time the note may be paid. If notice of dishonour is not given within the proper time the noting is of no effect. The only case in which evidence of the noting is needed is one where the presentment is made by one notary, and the protest has for any reason to be completed by another. Form A in the schedule would be useful in such a case, but any memorandum showing that the bill had been presented at the place of payment on the day it matured, and the answer received would be sufficient.

(2) We do not think there is such a practice, and if there were it would not be valid. The holder may give notice of dishonour on the day after the bill matures (sec. 49 k) and he may employ a notary to give this notice on his behalf (sec. 49 a), but if he invokes the aid of the notary for this purpose on the day after maturity that would not enable the latter to "protest" the bill. As the practical results of the notice of dishonour are identical with those following a protest, this involves no disadvantage. Similarly the effect of absence of evidence of noting, where for any reason the notary who presented the bill cannot complete his work, may be obviated by notice being given by the holder, or someone on his behalf, on the day following the date of maturity.

PARTIAL PAYMENT OF A BILL—SHOULD A BANK ACCEPT.

Question 474.—Is there any law relating to part payment of a bill (by promissor or acceptor or his agent) held by a collecting agent? A case came to my notice where a part payment was left with a bank to apply on a bill payable there, but held by another bank. The bill was duly presented, and the part payment left by the acceptor was offered to the collecting bank and refused by them. The bill was protested and returned for non-payment, and the money intended as a part payment returned to the acceptor. What I would like to know is if the bank did right, according to the law, in refusing to accept a part payment, endorsing it on the bill, protesting (if necessary), and returning the bill along with the remittance? This latter is the course I should think to be the best business, but I have been unable to find a law covering the point.

Will you kindly tell me the publishers of the following, and could you suggest other books that would be of practical use in the banking profession: Notes on Canadian Banking, Hague; Gilbart on Banking; Byles on Bills; The Country Banker.

Answer.—There is no direct statute that we know of relating to partial payment of a bill. It is established, however, that the holder may accept partial payment without in any way affecting his claim on the drawer or endorser for the balance, provided he does nothing otherwise that would release him, but he is quite free to refuse to accept anything but payment of the whole amount of the bill, and this appears to be the English practice. We think, however, that the plan suggested is quite permissible, namely, to take the money tendered, if offered strictly as a partial payment, and then protest the bill so as to retain recourse against the other parties to it—indeed under some circumstances any other course might be prejudicial to the interests of the owner of the collection.

With regard to the last clause of the enquiry, Notes on Canadian Banking is an annotated edition of Bullion on

Banking, which is by the same author (Rae). We recommend The Country Banker as probably the best book of its kind yet issued. There is a smaller publication entitled On the Bank's Threshold (Miller), which is in some degree useful.

For legal text books, we would consider Chalmers' Law of Bills of Exchange and Promissory Notes much the best, for the reason that the author was the framer of the English Bills of Exchange Act, which is almost identical with our own, and the last edition of his book is practically a commentary on each separate clause of the Act. It is much more useful for our purposes than Byles on Bills.

Of the commentaries on the Canadian Act, that by Maclaren is the fullest, but we are not in a position to express an opinion as to which of them is otherwise the best. These books, and the others named, can be obtained by ordering through local booksellers.

Memoranda of Partial Payments on a Cheque.

Question 475.—A. gives his cheque to B. in payment of a debt, and B. endorses to C. The cheque is dishonoured. A., later on, makes partial payments in respect of the debt represented by the cheque, the amounts so paid being noted by C. at one end of the back of the cheque, but without any indication as to who made the payments, thus:

July 2nd—Received $5 on cheque.
" 5th—Received $3 " "

C.

The bank afterwards pays the cheque to the holder, at its face, ignoring or not observing the memorandum on the back.

Would the bank be liable to the drawer in respect of the amount of A.'s debt thus overpaid?

Answer.—We think there was nothing in the circumstances to operate as a countermand of the express terms of the cheque. The bank would have been justified in withholding payment until the endorsement had been explained,

and it would have been wiser to have adopted such a course, but we think they are entitled to charge the whole amount to their customer's account.

Surviving Partner's Right to Operate the Firm's Bank Account.

Question 476.—Is the surviving partner of a firm legally entitled to operate the banking account of the firm upon the death of his partner, notwithstanding the absence of any agreement to that effect, and to use the funds in hand or any other firm funds deposited, by checking it out in the name of the firm?

Answer.—The deposit being a joint one the surviving partner becomes entitled to withdraw it under the law of survivorship.

Liabilities of Partners—Guarantee Bonds.

Question 477.—A gives a bank a guarantee securing advances made to C. A afterwards enters into co-partnership with C under the style of C & Co. How does this affect the guarantee? Is A held for all advances to C previous to the partnership, and equally liable afterwards as a partner with C for the indebtedness of C & Co.? Is his connection as C's partner as equally binding for C & Co.'s debts as his guarantee would be? Does this guarantee carry some additional security after he becomes a partner?

Answer.—The formation of the partnership does not affect the guarantee. A continues to be liable as guarantor for C's indebtedness, and becomes liable as one of the principal debtors for the obligations of C & Co. He might also become liable on the same debt as a guarantor or endorser, and the effect of this would be that in the event of an assignment by the partners of their joint and separate estates, the bank would have certain ranking rights against A's personal estate, which might give it a very decided advantage over the creditors of C & Co. who have not A's separate liability.

We would therefore certainly think it well, if he has considerable means outside of the partnership assets, to take his guarantee for the firm's debts; this is a very common precaution.

It should be remembered that the partnership estate of C & Co. would not be liable for C's indebtedness to the bank, unless there was a novation—that is, unless they agreed with the bank to assume and pay the debt. The mere fact that there was such an understanding between themselves would not make the bank a creditor of C & Co. for advances to C, and under some circumstances this might be an important point.

Restriction in a Deed of Partnership.

Question 478.—If by the terms of the deed of partnership special restrictions are fixed as to the mode in which the partnership may be bound, would these affect the bank in the absence of actual notice?

Answer.—We think that the bank would not be bound by these restrictions unless it has actual notice.

Non-trading Partnership—Individual Liability on Paper Endorsed by and Discounted for the Firm.

Question 479.—Is it necessary that a firm of solicitors should sign and register a certificate of partnership such as is required in case of a trading partnership, in order to hold them jointly and severally liable on paper endorsed by them in the firm's name, and discounted for the firm? Does section 23 (b) Bills of Exchange Act, cover this point?

Answer.—The registration of such a certificate is not requisite, nor would it alone, we think, have the effect of making the partners jointly and severally liable. If they desire to come under such liability, the partners should each sign a declaration to that effect and lodge it with the bank, although such a declaration made in any public way would doubtless be binding.

Section 23 (b), which in effect makes one member of the partnership the agent of the others to bind them by use of the firm's signature, would, we think, apply only where one member can bind his partners. Ordinarily this is not true of non-trading partnerships, such as solicitors, architects, and the like, but even in their case if the transaction were clearly necessary in connection with the firm's business the partners might be bound, as, for instance, where a note is taken for solicitor's costs, and is discounted for the purposes of the firm.

Question (Submitted in continuation of the above).—As your meaning in first paragraph of answer is not clear to me, I will have to beg the favour of a further explanation. The case cited in my question is that of a firm of solicitors who are in the habit of discounting notes taken in payment of costs, just as a trading firm discounts notes taken for sales of goods. In second sentence of first paragraph you say: "If they desire to come under such liability, etc., they should sign a declaration to that, etc.," and in second sentence of second paragraph you say, "if the transactions were clearly necessary the partners might be bound, etc." I should like to know beyond a doubt, if the partners are jointly and severally liable in the premises cited.

Answer.—We do not think you can be certain, as you say, "beyond a doubt" as to the liability of the parties, unless you have a clear proof that the partner signing had power from the others to make the firm liable for these obligations. *Prima facie* it would not, we think, be within the scope of the business of a firm of solicitors to discount paper, and the rule is that one partner binds the others only in connection with business within the scope of the partnership. Yet the question is one of fact, and if it were customary for the firm to discount paper, proof of such custom would bring the transaction within the scope of the business, and if it were proved that the firm got the benefit of the discount, as a firm, the other partners could not repudiate the liability, and at the same time retain the benefit.

NON-TRADING PARTNERSHIP—LIABILITY OF PARTNERS.

Question 480.—To what extent are partners in a non-trading partnership liable to a bank:

1. In respect to an endorsement made by one member of the firm on a note given to them in settlement of an account for services, as for instance to solicitors.

2. Where an endorsement is given for the accommodation of the maker of a note.

Answer.—As a non-trading partnership does not *prima facie* require to give promissory notes or accept bills, the making or acceptance by one partner in the name of the firm would not *prima facie* bind the partnership. Evidence of the actual transaction would be admissible, and if it were *de facto* a partnership transaction the firm would be bound. The endorsement of a bill or note payable to the order of a non-trading firm stands in a little different position. There is no *prima facie* presumption that a non-trading firm does not require to take a note or bill in settlement or payment of a debt due the firm, and if the firm's name were endorsed by one partner upon such a bill or note the endorsement would bind the firm if it were given in connection with a partnership transaction, but the firm would not be liable if the transaction were that of the individual partner only, unless *de facto* his authority as a partner extended to such a case. There are so many kinds of non-trading partnerships, that no general rule can be laid down as to what would and what would not be *prima facie* a partnership transaction. Much would depend upon the nature of the business and upon the course of dealing in the past, e.g., if a non-trading firm kept a bank account and were in the habit of discounting bills and notes payable to the order of the firm, there could be no question that for the purposes of the bank the scope of that partnership would authorize one partner to endorse the firm's name on the paper discounted, but if one partner in a non-trading firm which *prima facie* did not require capital to carry on its business, and which did not keep a bank account, should open such an account and dis-

connt paper in the firm's name, and if it should turn out that the whole thing was a fraud on the partnership, and that the firm did not authorize the transaction or get the benefit of it, we think the bank would have great difficulty in collecting from the firm upon its endorsement.

2. In the second case, the firm would not be liable unless it could be shown that the partner making the endorsement had *de facto* authority to make it.

Note Given by Trading Firm—Obligations of the Firm and the Partners Individually.

Question 481.—Two partners in a trading firm wish to borrow a sum for use in their business, and give the bank a promissory note signed by both individually and made payable to the order of the bank. Would it afford the bank any greater security to have the note made to the order of the firm and endorsed by the firm to the bank?

Answer.—We assume the note is given by the parties jointly and not jointly and severally. If the two partners who give the note constitute the firm, their joint promise to pay gives the bank the same recourse as if the note were signed in the firm's name, but not a claim which, in the event of bankruptcy, would rank on their individual estates in competition with their individual creditors. If there were other partners the bank's position as holder of a note by two only would not be satisfactory, as it is not the obligation of the firm.

It is customary to require the note in such a case to be made by the firm and endorsed by the partners individually, and such a practice has undoubted advantages.

Power of Attorney Signed by One Member of a Firm.

Question 482.—Are the acts of an attorney under a power signed by one member of a firm binding on the other members, or should all sign it?

Answer.—A power of attorney signed by one partner is binding upon the rest in so far as the matters included in it

are within the scope of the partnership, and to this extent it need not be signed by the other partners. We should say that it would be a prudent act on the part of the bank to require all to sign, but this is a matter of prudence, not of law.

Power of Attorney Given on Behalf of a Firm by one of the Partners.

An esteemed subscriber has called our attention to the fact that as worded a previous answer might be construed to mean that whatever a partner might himself do on behalf of the firm, an attorney appointed by him might also do—from which meaning he very properly dissents. Our answer was intended to mean that the acts of an attorney appointed by one partner would be binding on the firm with respect to such matters as, under the scope of the partnership, one partner would have the right to do through an attorney, either by express authority in the articles of partnership, or by necessary implication from the nature of the transaction itself; but the acts of an attorney appointed by one partner would not otherwise bind the firm if the other partners objected. In order that the bank might not have to take any risks as to the scope of the partnership we added to the answer the advice to require all to sign.

Bills Requiring Presentation by Mail—Power of Attorney in Favour of a Bank Manager, to Accept, Signed by a Firm by One of the Partners.

Question 483.—A bill is drawn on a firm doing business at a point where there are no banking facilities, and is sent for collection to the nearest bank. The latter sends the drawee the usual form of power of attorney in favour of its manager, to accept the bill, which is returned with the firm's name signed thereto by one of the partners. Is the acceptance of the bill under this power of attorney binding on the firm?

Answer.—We are inclined to think that a power of attorney, given under the circumstances mentioned in the question,

would bind the firm. We are assuming that the bill was drawn for a partnership transaction and that the power of attorney was confined to accepting that bill.

What Constitutes Partnership.

Question 484.—Should a private banking firm, whose business is confined strictly to private banking, register a certificate of the co-partnership, under cap. 152, R. S. O.?

Answer.—The answer to this question depends upon whether a private banking firm is "a partnership for trading purposes" within the meaning of the statute. The statute is a remedial one, and both by the rules of construction adopted by the court and by the express provisions of the Interpretation Act, it should receive "such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act." The object of the Act is, of course, to inform persons dealing with partnerships of the names of the partners, and the changes in or dissolution of the firm. It is confined to "partnerships for trading, manufacturing or mining purposes." There are doubtless good reasons why it did not include partnerships of every kind, and no doubt in ascertaining what is a partnership for the purposes mentioned in the Act, the fair, large and liberal construction and interpretation referred to must be applied.

In an English case in which the question of what was an occupation of a house for the purpose of trading came up, the court used these words:—

"Undoubtedly, if we are to take the term 'for the purposes of trade' as relating only to the business of buying and selling, no one can say that there is any buying or selling in carrying on the business of a telegraph company. It was never the intention of the legislature so to limit the meaning of the word 'trade.' It is only the literal meaning of the word which is to be regarded. In literature of all descriptions, both in prose and verse, we find that the word 'trade' is often used in a much more extensive signification than

to indicate merely the operations or occupation of buying and selling."

In illustrating their meaning the court further adds, "A banker's is a shop . . . and there again there is nothing like buying and selling as generally understood, but if it is a trade or business of a description quite *sui generis*."

In this case the court held that the business of a telegraph company was "for purposes of trade," within the meaning of the Act, and we think that the court here would hold that a private banking partnership is a partnership for trading purposes within the meaning of our Act, and therefore the firm should register the partnership declaration required by the Act.

Paid Cheques.

Question 485.—Has a bank a legal right to retain paid cheques?

Answer.—In the absence of any special agreement, we think the customer is entitled to receive back his paid cheques, on giving the bank a proper and sufficient acknowledgment of the state of his account.

Pass-Books—Current Account and Savings Bank.

Question 486.—(1) Is there any legal reason whereby a savings bank pass-book is different from an ordinary current account pass-book?

(2) If not, why is there generally an impression that the pass-book must always be brought to the bank when money is withdrawn?

(3) Can the bank decline to pay if the pass-book is not produced?

(4) Are the rules laid down by the bank in the pass-book binding upon the customer?

Answer.—(1) The difference is purely a matter of convenience.

(2) It is no doubt regarded as more important because it must be produced when money is drawn, and because it

serves as a receipt for special deposits often left untouched for a long period.

(3-4) The conditions in the pass-book are binding on the customer, and the bank is entitled to demand the production of the pass-book as a condition of payment. Of course if it were destroyed the same results would follow as in other similar cases; the bank could not withhold payment on proof of loss. On the other hand it incurs no risk if payment is made without production of the pass-book to the true owner of the money.

Pass-Books by Mail.

Question 487.—Could we not get legislation under which pass-books, with or without vouchers, could be sent by book-post instead of letter-post?

Answer.—Such a classification would be practicable if the Postmaster-General chose to take the necessary steps, but we should suppose that the objections to sending pass-books and vouchers in such a way that they could be examined by the clerks in the post office, through whose hands they pass, would make it inexpedient to adopt the practice even if it were permitted.

Past-Due Note with Two Promissors Held as Collateral to a Renewal Note Taken from One of Them.

Question 488.—A note was discounted by a bank on which were two joint promissors, one of the two, to the knowledge of the bank, having added his name as a surety for the other. At maturity the bank renewed the bill for the debtor, taking a note signed by himself alone, but retaining the original note as collateral security. This was done without notice to the guarantor. Is the latter released by this extension of time?

Answer.—The position of the parties in a case of this kind was fully discussed in the judgment of the Supreme Court of Canada in Gorman v. Dixon. The whole question involved in the present case is whether there was an under-

standing between the bank and the debtor that, notwithstanding the time given, the bank's claim against the surety was to be retained. The fact of the retention of the joint note seems to indicate this, and if such were the understanding, Smith would, under the ruling in the case referred to, still remain liable.

Payment in Error—Should Amount be Refunded.

Question 489.—A draft for collection was accepted for less than face, but charged to drawee's account as for full face in error. Bank from whom received refuse to refund amount overpaid. Must they repay, or on whom should loss fall?

Answer.—This appears to be a clear case of payment under mistake, and one where the party receiving the money should refund the amount overpaid.

The partial acceptance has of course important consequences with respect to the drawer and endorsers, but it does not make the acceptor liable for more than the partial amount, and having paid more, in error, he is entitled to recover the excess unless special circumstances intervene which would debar him from doing so.

Payments Made on Legal Holidays.

Question 490.—A gives his cheque to B in payment of an indebtedness on the evening preceding a legal bank holiday. The bank remains open for the transaction of business on the holiday, when A withdraws the balance of his credit, thus cutting the holder of the cheque out of his money. Has the holder of the cheque any recourse against the bank? His plea would be that he naturally assumed that the bank was not open on the holiday and held his cheque until the first business day thereafter, when he found the funds had been withdrawn?

Answer.—A bank is under no obligation whatever to the payees or holders of unmarked cheques. There is nothing to hinder the bank making payments to its customers

outside of the regular business hours, whether on a legal holiday or not, and its sole obligation is to pay its customers' cheques when presented, if it then has funds in hand to meet them.

Appropriation of Payments.

Question 491.—M & Co. are in the habit of discounting with their bankers sight drafts against shipments of produce to the United States. One of the drafts for $75, was returned dishonoured and charged to the account of M & Co., increasing their overdraft to $150. Some time afterwards the firm sent the bank for discount their note for $100, endorsed by another party, and the proceeds of this note were remitted by the bank to M & Co. When the note fell due the firm sent the bank $100 to take it up, but the bank credited the amount instead to the overdrawn account and protested the note. Would the bank have recourse to the endorser?

Answer.—Upon the statement that the $100 was sent the bank to pay the note, the bank would have no right to apply it upon the other debt The debtor has the right, when paying money, to appropriate it to any indebtedness which he may specify, and the creditor cannot change the appropriation without the debtor's consent. Therefore the note of $100 must be regarded as paid and the endorser discharged.

On the general subject of appropriation of payments the case In re Exchange Bank; The Queen v. Ogilvy, will be found instructive. (Journal, Vol. 5, p. 258.)

Perpetual Ledgers.

Question 492.—Are perpetual current account ledgers under any legal disability?

Answer.—If by "perpetual" ledger is meant one from which the leaves can be removed and fresh pages substituted, we do not think that this involves anything that can be called legal disability. It is conceivable that part of the record might get lost, or its genuineness be impugned because of

the apparent ease with which a false sheet could be inserted, but the position of a customer's account is always a matter of proof, and the facts can be evidenced in any way.

As to the expediency of using such a ledger, we would say that we think there are sufficient practical objections to outweigh its apparent advantages.

Place of Payment of a Bill—Blank Form of Acceptance Showing Place of Payment.

Question 493.—In making drafts on their customers it is the habit of some houses to provide a blank acceptance on the draft, naming the place of payment, ready to be signed by the drawee.

(1) Is this form for the acceptance of integral part of the bill or is it to be regarded as placed there for the drawee's convenience, subject to alteration by him if the place of payment is not to his liking, or to be ignored if he thinks fit?

(2) A draft on "AB, 145 C Street, Montreal," has across the end the following:

Accepted payable at the
Bank of A, Montreal.
5th May, 1898.
(Signature).....

The drawee writes an independent acceptance below this form as follows:

Accepted, 5th May, 1898.
AB.

Would this bill be payable at the Bank of A or at 145 C Street?

Answer.—(1) We think the form for the acceptance cannot be considered an integral part of the bill, and that it may be altered or ignored by the drawee.

(2) We think that as the drawee was not bound by the form for acceptance described in this case, and as he clearly ignored it, and showed by his act that he was giving a separate and independent acceptance, the terms of the latter must govern. The bill would therefore be payable at the address given.

Post-Dated Acceptance.

Question 494.—A bill of exchange payable one month after sight is presented for acceptance on the 12th January. The acceptor writes his acceptance across it, but adds as the date "16th January." The holder pays no attention to the latter date, but treats the acceptance as of the 12th, presenting the bill for payment at maturity calculated from the 12th. The party refuses payment on the ground that the maturity must be calculated from the 16th, and the bill is protested for non-payment.

Is the holder justified in protesting the note, or having taken the acceptance without demur, is he obliged to abide by the date which the acceptor added?

Answer.—Section 54 of the Bills of Exchange Act declares that the liability of an acceptor is to pay a bill "according to the tenor of his acceptance." This seems to involve, in the case put, that the obligation of the acceptor is to pay the bill at one month and three days after the 16th, the date which forms part of his acceptance. C therefore would not be justified in protesting the bill on the date mentioned, because he would have no claim on B until the time fixed by the acceptance should come round.

Under such conditions as the above the drawers and endorsers would be discharged, the holder having taken an acceptance which varied the effect of the bill as drawn.

Post-Dated Bills.

Question 495.—What risk, if any, does the bank run in discounting a note dated ahead of the day of discount?

Answer.—A post-dated bill is by sub-sec. 2, sec. 13 of the Bills of Exchange Act, declared to be not valid by reason of the post dating.

Power of Attorney Given by a Woman before Her Marriage.

Question 496.—A Miss Smith has a store. She marries, and the day before her marriage she gives a power of attor-

ney, witnessed by an unmarried woman only, to her sister, Miss M. Smith.

The store will be carried on in Miss Smith's name by her sister Miss M. Smith. Acceptances come on Miss Smith as usual, and are accepted under the power of attorney by Miss M. Smith. The firm is registered in the old name I believe.

Does this in any way affect her banker or the other bank which presents acceptances?

Answer.—We presume the statement that the firm is registered in the old name is an error; there being no firm, but simply one person carrying on business, no registration is necessary. As to the main point, the marriage of Miss Smith does not rescind the power of attorney, and if she chooses to carry on business in her maiden name, she is quite free to do so. The liability is her liability, and the only question involved is one of identification.

Power of Attorney Held by Brokers Authorizing Bank Officers to Transfer Bank Stock.

Question 497.—Is the manager justified in acting on a power of attorney from a shareholder of the bank, which authorizes him to sell and transfer certain of its shares on behalf of the shareholder, and to receive the consideration money, etc., when the same is handed to him by a broker, with the request that the transfer be made to his nominee, the proceeds of the shares not be paid to the manager on behalf of the shareholder, but left to be deposited by the broker?

Answer.—We think that a bank officer would not be justified in acting on such a power of attorney in the way mentioned. If as a matter of fact the shareholder did not get the proceeds from the broker, the officer acting as attorney would probably be responsible to him therefor, unless he could show that the broker had authority from the shareholder to receive the money.

It is not unusual for such powers of attorney to be given, but we think the banker should require in every case that they should be accompanied by a letter from the shareholder, indicating how they are to be used.

Power of Attorney to a Minor.

Question 498.—May one under age be lawfully appointed the attorney of a merchant to conduct his bank account?

Answer.—Yes; the fact that he is under age does not disqualify him.

Attorney for a Person Trading under a Firm Name.

Question 499.—John Brown, who carries on business under the name of John Brown & Co., gives a power of attorney signed "John Brown" only. Has the attorney power thereunder to sign for John Brown & Co.?

Answer.—It is customary, and the better practice, that the constituent should describe himself in the power of attorney as "carrying on business under the name and style of John Brown & Co.," but we think that a duly constituted attorney of John Brown may bind his principal, to the extent of the authority conferred upon him, under any name in which the principal carries on business alone.

It is to be noted, however, that a power of attorney in which the business name adopted by the constituent is described would probably be held to limit the attorney's authority to transactions connected with that business. Thus a power of attorney from "John Brown, trading as John Brown & Co.," would cover transactions arising out of the business of John Brown & Co., but it would probably not cover transactions for another business carried on by the same man under another name.

Power of Attorney Signed by One Member of a Firm.

Question 500.—Are the acts of an attorney under a power signed by one member of a firm binding on the other members, or should all sign it?

Answer.—A power of attorney signed by one partner is binding upon the rest in so far as the matters included in it are within the scope of the partnership, and to this extent it need not be signed by the other partners. We should say that it would be a prudent act on the part of the bank to require all to sign, but this is a matter of prudence, not of law.

Power of Attorney Given on Behalf of a Firm by One of the Partners.

An esteemed subscriber has called our attention to the fact that as worded the previous answer might be construed to mean that whatever a partner might himself do on behalf of the firm, an attorney appointed by him might also do—from which meaning he very properly dissents. Our answer was intended to mean that the acts of an attorney appointed by one partner would be binding on the firm with respect to such matters as, under the scope of the partnership, one partner would have the right to do through an attorney, either by express authority in the articles of partnership, or by necessary implication from the nature of the transaction itself; but the acts of an attorney appointed by one partner would not otherwise bind the firm if the other partners objected. In order that the bank might not have to take any risks as to the scope of the partnership we added to the answer the advice to require all to sign.

Power of Attorney to Accept Bills in Favour of a Bank Manager—Omission to Accept.

Question 501.—The manager of a bank which holds a bill for collection receives from the drawee a power of attorney on the form in common use authorizing him to accept the bill. This he neglects to do, but attaches the power of attorney to it. Would this give the holder of the bill a right to sue the customer?

Answer.—Clearly not, on the bill. We understand that the form in general use contains an undertaking to pay as

well as authority to accept, and it might be said that this is a contract with the collecting bank entitling it to a remedy on contract. There is no reason why the power to accept should not be exercised after maturity.

Power of Attorney Authorizing a Bank Manager to Accept a Bill Held by the Bank for Collection.

Question 502.—A bill drawn at Bank B is sent to Bank A for collection. The manager of the latter procures from the drawee a power of attorney to accept the bill on the usual form. Is Bank B entitled to require that this power of attorney shall be lodged with it when the bill is presented for payment?

Answer.—Yes. The bank is entitled to be put in possession of written evidence of the attorney's authority to accept the bill.

Prefix "Mrs." to a Signature.

Question 503.—Does the word "Mrs.," placed before a woman's signature as an endorsement, invalidate it in any way?

Answer.—No. The sole question in all cases is that of identity, and assuming that the name with "Mrs." prefixed is written by the payee of the cheque, the endorsement is valid.

Collections Requiring Presentation by Mail.

Question 504.—We receive for presentation a draft drawn by a firm in England on a party resident in a village adjacent to our office, from which there is a daily mail to this city, delivered here during business hours. We have no convenient means of presenting the draft personally, but we send the usual power of attorney slip for his signature. Are we justified in holding the draft for a few days, or does the bank incur liability if the draft is not presented through a notary within two days?

Answer.—You are not bound, unless you have special arrangements in the matter, to accept the duty of collecting agent, but if you do accept in this case you are bound to take steps to have the bill presented within a reasonable time, and if not accepted on the day of presentment, or within two days thereafter, to treat it as dishonoured.

The two days' limit mentioned in section 42 does not apply in the case you describe, but only to a bill which has been presented; we do not think that to advise the drawee that you are holding the draft, and to ask him to sign a power of attorney enabling you to accept, is a presentment. The only question involved in this particular view of the matter is whether by delay in the actual presentment you have failed in your duty as collecting agent to such an extent as to bring yourself under liability to the owner of the bill. To form an opinion on this point it would be necessary to have all the facts.

Collections Requiring Presentation by Mail.

Question 505.—Referring to the previous answer, will you be kind enough to give a somewhat fuller opinion in this matter, as it is one which is continually cropping up. You say, "The only question involved is whether you have failed in your duty as collecting agent, to such an extent as to bring yourself under liability to the owner of the bill." It is established by usage in Ontario, that presentment will be made of such bills, by sending the usual notice and power of attorney through the mails, and that if a reply is not received in (say) five days they will be treated as dishonoured? Would this bring it under the provisions of section 43 (b) of Bills of Exchange Act? In brief, is presentment of such bills excused by usage in Ontario? If the bill itself is sent through the mails (as seems to be meant by the Act), where there is a daily mail between the places, when do the two days (sec. 42) start to run—from the date of mailing by the bank, or the probable receipt

by the drawee—that protest may be made under sec. 51, sub-sec. 8, if necessary?

Answer.—It seems to us that there is no practice recognized in Ontario, "authorized by agreement or usage" in the words of the statute, respecting the presentment of bill through the post office, by which, of course, is meant the sending of the actual bill itself to the drawee. It is clear that a good many difficulties might arise if a bill were so sent, and unless it was done with the express or implied sanction of the owner of the bill, the collecting bank would, we think, be taking a very unreasonable risk.

The other practice referred to and which now prevails very generally, of sending a notice containing a blank power of attorney to accept, might be regarded by the courts as an established usage governing the conditions on which a collecting bank receives unaccepted bills drawn on persons whom it can only reach by mail. We would not like, however, to express an opinion as to this. Unless the collecting bank could successfully argue that the arrangement between itself and the owner of the bill in question was within these lines, by reason of express agreement, or by implication from the course of business between them, then the collecting bank would be responsible for the results of the non-presentation of the item.

There is no question involved here of presentment being excused. If there is anything in the argument at all the collecting bank's defence is that the bill was not sent to it for presentation in the ordinary way, but on the understanding that it would endeavour to procure acceptance by means of the notice and power of attorney, and having made that effort its duty was fully accomplished.

As regards the bearing of sec. 42 on the case of a bill sent direct by mail to the drawee, notice of dishonour must be given if the bill is not accepted within two days after the day on which it reached him. There would no doubt be a good deal of practical difficulty in keeping within the law on

this point if bills were sent direct by mail; that is one of the difficulties to which we had reference in the remarks made above.

BILLS REQUIRING PRESENTATION BY MAIL—POWER OF ATTORNEY IN FAVOUR OF A BANK MANAGER, TO ACCEPT, SIGNED FOR A FIRM BY ONE OF THE PARTNERS.

Question 506.—A bill is drawn on a firm doing business at a point where there are no banking facilities, and is sent for collection to the nearest bank. The latter sends the drawee the usual form of power of attorney in favour of its manager, to accept the bill, which is returned with the firm's name signed thereto by one of the partners. Is the acceptance of the bill under this power of attorney binding on the firm?

Answer.—We are inclined to think that a power of attorney, given under the circumstances mentioned in the question, would bind the firm. We are assuming that the bill was drawn for a partnership transaction and that the power of attorney was confined to accepting that bill.

PRESENTATION FOR ACCEPTANCE—TIME IN WHICH TO BE MADE.

Question 507.—Could not something be done to effect a change in the law which holds banks responsible for payment of a draft if not presented for acceptance within forty-eight hours? It is often impossible to obtain acceptance in such a short period for various reasons, and it thus puts the bank in an awkward position, for sending notices about every bill outstanding beyond the allotted time involves a great deal of work. Why should not the banks be allowed to use their discretion and thus save time and money too?

Answer.—We do not think it possible or desirable to make any alterations in the law on this point. The provision respecting the duty of the holder of a bill to give notice of dishonour within a reasonable time is an essential one. If there were not some limitations of that kind the risks of

drawers and endorsers would be indefinitely increased. They have a right to know within a reasonable time whether or not the party drawn on has become responsible for the bill. Under sec. 42 of the Bills of Exchange Act, it is possible for a bill to lie three or four days in the collecting agent's hands without notice, which is surely long enough. Thus, it might be received on Monday afternoon, presented on Tuesday; if not then definitely refused acceptance, the bank might wait until Thursday before treating it as dishonoured, and apparently it may be handed to the notary on that day and the notices mailed on Friday.

A remedy for the difficulty of which our correspondent complains would be for banks to make a reasonable charge for the collection duties which they undertake; but there is no reason why they should seek to discharge them in a less thorough manner than reason and law now require.

Draft not Presented by Collecting Agents on Date of Maturity.

Question 508.—Brown & Co., of Montreal, draw a draft on Jones, of Hamilton, through the "A" Bank. The latter send it to their agents, the "B" Bank in Hamilton, for collection, and it is accepted in the usual course. Through an oversight on the part of the "B" Bank the draft is not presented for payment until fifteen days after the due date. Five days after its maturity Jones absconds. The "A" Bank now apply to the "B" Bank for payment on behalf of their customers, Brown & Co. "B" Bank refuse, claiming that "A" Bank should have asked for the draft. Who is responsible?

Answer.—We do not think there is the slightest doubt that the collecting bank must bear the loss. If the item had been marked "no protest," the position would be otherwise. In the instance which is now submitted apparently the duty of the collecting bank was to give notice of dishonour in case of non-payment. As they failed to do so, the drawers of the draft are discharged, and the bank in Montreal has a right to look to the collecting bank for protection.

PRESENTMENT FOR PAYMENT NOT EXCUSED BY REQUEST FROM DRAWEE TO RETURN THE BILL BEFORE MATURITY.

Question 509.—A has accepted a draft held for collection by Bank C, payable at Bank B, and the day before it falls due he instructs Bank C to return it to the drawers unpaid. Should Bank C present it at Bank B before returning?

Answer.—A's request should not excuse Bank C from duly presenting the bill on the day of maturity.

ACCOUNT OF A COMPANY OPERATED IN THE NAME OF THE COMPANY'S AGENT. LIABILITY OF THE COMPANY.

Question 510.—An account is opened in the name of John Adams, the cheques on which bear above his signature the name of a mining company. He is known to be an employee of the company, acting in the absence of the formally authorized agent. Would the company be liable for an overdraft in such an account caused by the payment of wages, and if not would Adams be personally liable?

Answer.—The question involved is one of agency, depending on the facts of the case and could not be answered without a full statement of the facts. We should suppose that the company would not be directly responsible, that the agent alone would be personally liable, but he might have a claim on the company for money expended on their behalf, and in that indirect way the company might be responsible to the bank.

LIABILITY OF AN AGENT FOR TRANSACTIONS ON THE COMPANY'S BEHALF.

Question 511.—Is the properly authorized agent or official of any company personally liable for transactions on the company's behalf which are within his powers?

Answer.—We do not think an agent is liable under the circumstances mentioned.

Trust Funds Deposited in a Private Bank.

Question 512.—A solicitor or trustee deposits a client's money in a private bank, without instructions from the parties interested. In case of loss would he be held personally responsible?

Answer.—This would depend altogether on the facts. If, e.g., there were no better place of deposit available, and the alternative would be to retain the money in his own house at risk of robbery, and if the other circumstances made the course one which any prudent man may adopt in dealing with his own moneys, the trustee would probably not be under personal responsibility.

Collections Sent to Private Bankers.

Question 513.—A current account customer brings in a note for collection, made payable at a private banker's office in a place where there is no chartered bank. He is told that the collection will be forwarded to the private banker's at his own risk, and the following notice had been placed in his pass-book when his account was opened, viz.:

All bills, notes and other securities left with the bank for collection will be collected at the risk and cost of the parties leaving them, the bank only holding itself responsible for the amount actually received by it, and not for any omission, informality or mistake occurring in collecting them.

When the note matures a partial payment is stated to have been made on the note to the private banker who fails to remit the money, and also fails financially, suspending payment the day after the payment was made.

(1) Can the customer bring suit against the bank and recover the amount paid on the note, but not remitted by the private banker?

(2) Would not the customer have a chance to recover the amount from the maker of the note? In making the note payable at this private banker's office, did he by so doing appoint him the collecting agent?

The note was returned to the customer, and of course no charge was made by the bank.

Answer.—(1) If the understanding with the customer was clearly that stated, then he must be taken to have authorized the employment of the private banker as his agent to make the collection, and must bear any loss that may result therefrom. On proof of the conditions upon which the collection was received the customer's suit against the bank must fail.

(2) The customer has no remedy against the maker of the note. Having authorized the employment of the private banker to collect the note, anything paid the latter by the maker is in effect payment to the customer.

The fact that the note was made payable at the private banker's office is immaterial. The liability is placed upon the customer by the parole agreement, etc., at the time the note was handed in.

We might add that the law is quite clear that where a bank selects a collecting agent of its own accord, without asking the customer for instructions, or putting on him the risks involved, it is responsible for the agent's acts.

Where a customer discounts with a bank bills which can only be collected by sending them to a private banker, it might seem reasonable that, as the sending of them to such agent is a course forced upon the bank by its customer's manner of doing business, he would be responsible, but the law is clearly otherwise, and most banks, we think, now take the precaution of requiring customers who discount or lodge for collection bills payable at such points, to give a letter of indemnity on the lines suggested by the notice clipped from the pass-book.

Collections Sent to Private Bankers.

Question 514.—A bill for collection is sent by a bank to a private banker, who is a customer of the bank, there being no chartered bank in the place where the bill is payable. The cheque received from the private banker in payment is dishonoured. On whom must the loss fall?

Answer.—Unless there was an understanding with the customer that the cheque should be sent to the collecting agent employed, of such a character as to make it clear that he had approved the selection of the agent, the bank must bear the loss.

Section 74 Bank Act—Inapplicable to Private Bankers.

Question 515.—Would an assignment of merchandise to a private banking firm drawn in the form provided in Schedule C to the Bank Act, 1890, hold good against judgment creditors of the assignor? Does the said form of security come under the Bills of Sale Act and consequently require registration when taken by another than by a chartered bank?

Answer.—The provisions of the Bank Act are applicable only to chartered banks, and a private bank could not validly acquire unregistered security on the form of Schedule C of the Bank Act. In the Province of Ontario a private banker is enabled to acquire warehouse receipt security under the provisions of an Act entitled "the Mercantile Amendment Act," but we do not know of any similar legislation in other provinces.

Hour at which Bills may be Protested.

Question 516.—Can a cheque be protested for non-payment before three o'clock on the day of presentation?

Answer.—A formal protest of a bill or cheque cannot be effected before 3 o'clock; see section 51 Bills of Exchange Act. The presentment by the notary may, however, be made at any time during the day. If, for instance, a notary presented a cheque at the bank immediately after 10 o'clock in the morning and it was refused, it would be a valid protest if he were simply to hold the item in his hands, without taking any further steps, until after 3 o'clock, and then protest it without further presentation. Such a course would be very inconsiderate, but we are only dealing with the legal aspect.

It must be borne in mind that (except, perhaps, in the Province of Quebec) a protest is a matter of no great importance; it is useful only as an evidence that the bill has been presented and dishonoured, and that notices of dishonour have been sent to the parties. Evidence of any kind is just as effective.

Hour at which a Note may be Protested.

Question 517.—Is it legal to protest a note at one o'clock on Saturday? Are we not bound to wait till three as on other days?

Answer.—A protest cannot be made on any day till three o'clock. This does not in any way conflict with the bank's right to close its doors at one o'clock. As explained in the answer referred to, the notary might present a cheque at ten in the morning, and, if then dishonoured, he would do his full duty, if he simply held it till three o'clock and thereafter completed the protest without further presentation.

Protest—Hour for.

Question 518.—A cheque is presented for payment by another bank at 10 o'clock, and payment is refused. Could their notary present and protest immediately thereafter?

Answer.—The notary may present the cheque immediately, but he cannot protest it until after three o'clock in the afternoon (section 51, 6b). The effect of this is that presentment at ten o'clock, if the cheque is dishonoured, is the only presentment that need be made; the notary may hold the cheque in his hands until three o'clock and then make the protest, without again presenting it.

Protest of Bills.

Question 519.—Do the laws on banking customs relating to the protesting of bills of exchange for non-acceptance and non-payment differ as between Canada and the State of New York?

Answer.—This is rather too wide a question for us to undertake to answer. There are statutory provisions in New

York which differ from ours and we would require to know the exact point in view before answering.

Protest—Error in the Notice as to Place of Presentment.

Question 520.—A note payable at Bank B was handed to the notary by Bank A for protest. It was duly presented, and notice of dishonour given in the ordinary form. In the Act of Protest attached to the note the notary, through error, declared that he had presented the note "at Bank A, where the same is payable." Does this invalidate the protest?

Answer.—The act of protest is merely a certificate as to what the notary has done, and could be corrected at any time. The notice of dishonour having been duly given, the parties would be liable without any further action on the part of the notary. He attaches his notarial act merely as a convenient mode of proving that the notice has been duly sent, but proof of the notice might be made in any other way.

In answer to a further inquiry on the subject:

If in the notice of dishonour it was stated that the note had been presented at Bank A while really payable at Bank B, that would not necessarily invalidate the notice. Such an error might be regarded as a misdescription of the bill, but the notice would not be vitiated thereby unless the party to whom the notice was given was in fact misled by it. (Section 49 (g)).

It is to be observed that the Act does not require a statement in the notice of dishonour that the bill was presented at the place where payable. See form "G" and "H" in the first schedule to the Act.

Provincial Government Cheques.

Question 521.—In view of section 103 of the Bank Act, must banks collect Provincial Government cheques at par?

Answer.—Section 103 of the Bank Act does not apply to cheques of the Provincial Government or any of its departments.

Receipts of Railways—Their Value.

Question 522.—City miller bought wheat from village grain merchant f.o.b. at village. Bill of lading and draft attached sent to city bank. Buyer states wheat unloaded 50 bushels short. Where, under these circumstances, is quantity to be ascertained, at village or city? What effect does the attaching bill of lading to draft and sending to bank have on the proposition, freight and bank commission being paid by the buyer?

Answer.—If the shipper proves that he delivered the full quantity of the railway company, his responsibility ceases. The receipt of the railway company would not bind provided they proved that they delivered all they received.

Refusal to Pay Money to Depositor under Influence of Liquor.

Question 523.—Can a depositor under the influence of liquor legally draw his money out of his savings bank account?

Has such a depositor any ground for action against the bank for refusing to give the money?

Answer.—This is a very difficult question to answer. If a depositor were so much under the influence of liquor as to be quite incapable of understanding what he was doing, the bank would probably not be discharged by his signature to a receipt for money paid to him in that condition. If, however, he was but slightly under the influence, and quite sensible of what he was doing, the bank could not refuse.

Whether the depositor would have a ground of action against the bank for refusing to give the money would depend entirely upon the above points. If the bank were justified in refusing because of his unfitness to transact business, he would have no claim. If, however, they made the mistake of refusing when, notwithstanding his being under the influence of liquor, he was quite capable of transacting business, the bank would probably be liable for damages.

Refusal of Bank to Pay Customer's Cheque for which there are Funds.

Question 524.—May the teller of a bank refuse to cash a cheque which is correct in every particular and for which there are funds? The case in mind is one where the teller had accidentally become aware that it was the drawer's intention to order the bank not to pay, but the teller knew of no reason why the drawer should stop payment, and no such notice had been received by the bank when the cheque was presented.

Answer.—As the customer who drew the cheque is the only person who would have any right to complain of its refusal, although not formally notified, the refusal was in order. We think the teller took the risk of the drawer changing his mind, and of making the bank liable for having refused a cheque for which there were funds.

Right of Bank to Set-off an Overdue Note of a Deceased Debtor against a Deposit made by His Executors subsequently to His Death.

Question 526.—A bank holds a promissory note of a deceased party. After the promissor's death his wife, having obtained "letters of administration to his estate, causes through her agent to be deposited in the bank certain moneys in her name 'Trust Account Estate of a (promissor)'." Can the bank retain funds so deposited against the note, or are they bound to honour cheques drawn on this account?

Answer.—We think the bank cannot retain the funds deposited by the agent of the administratrix against the indebtedness of the intestate.

To be the subject of set-off debts must be mutual, and in the case put the mutuality of the debts, without which there can be no set-off, does not appear to exist—the intestate and the bank never stood in the relation of mutual debtors to each other. The debt to the bank was contracted by the intestate, but the debt of the bank was never due or owing to the intestate. The administratrix by reason of a contract

between her and the bank is the bank's creditor, but there is no contractual relation between her and the bank by which she is made the bank's debtor.

We do not overlook the fact that the intestate's note fell due after his death but we cannot conclude that this circumstance alters the case. The intestate did and the administratrix did not contract the debt upon the note; the administratrix did and the intestate did not deposit the money in question with the bank.

Rights of the Holder of a Cheque against the Drawee Bank.

Question 527.—In your reply to a former question you say that the acceptance by banks of cheques for part of their amount would as a practice be open to objection. Would you kindly state the principal objections?

(2) You also imply that to give the holder a right to demand payment of part of the cheque when there were insufficient funds for the whole "would involve serious consequences." In Girouard's "Bills of Exchange Act, 1890," p. 260, the case of Gore Bank v. Royal Canadian Bank, 13 Ch. 425, is quoted: "If a bank refuses to pay a cheque, having sufficient funds of the drawer for the purpose, the holder can compel payment in equity." If this rule holds good it might be in the interest of all to extend it to a case of "insufficient funds."

Answer.—(1) The chief objection is the trouble and risk of error involved, for which the trifling profit derived from the class of accounts where such things might happen would never pay.

(2) The remark cited is contrary to the well-recognized rule, that until a cheque has been accepted the holder is not in privity with the bank, and no one can proceed against it in connection with the cheque except the drawer. It had nothing to do with the merits of the case, but was a mere passing remark.

As to the consequences of a change in the law, the following among other considerations may be mentioned:

If the holder had a right to demand payment it would involve a duty on the part of the bank to pay on his demand if it held funds, and a consequent responsibility to him for any error in refusing payment. At present, whether the bank pays a cheque or refuses it, if it refuses one cheque and immediately afterwards pays another, if it overlooks a credit, or charges the customer with a wrong debit, the matter is one which affects only the bank and the customer, and a reasonable and friendly settlement of any mistake is in practically every case assured. It needs little imagination to forecast the difficulties that would arise if the bank had to reckon with a holder who was (or thought he was) unjustly treated. To give such a right to holders of cheques for which there are insufficient funds is open to other practical objections, such as the labour and risk of error it would involve, and the endless disputes which might be expected to result.

Canadian Bankers' Association Rules Respecting Endorsements.

Question 528.—(1) Do the following endorsements require the guarantee of the depositing bank under the rules?

(*a*) John Smith.
p. Tom Jones

(*b*) The Winnipeg Marble Company
William Brown.

In the second case there is no incorporated company: Brown carries on his private business under the name quoted.

(2) If endorsements such as these are passed without the guarantee, what is the position of the paying bank?

Answer.—(1) Both of the above endorsements must be regarded as irregular within the terms of the rules. (See last part of Rule 2, and Rule 3). They do not in either case indicate the authority of the person signing.

(2) If endorsements such as those mentioned in the question are accepted by the paying banks without a guarantee, they are protected under the amendment to the Bills of Exchange Act of 1897, should they prove to be forged or unauthorized. Their rights against the depositing bank are somewhat differently conditioned from the rights they would have under a guarantee given in accordance with the rules; the chief difference is that the right under the Act is conditional on proper notice being given as required by its terms.

In discussing these rules in his article printed in the Journal for January, 1898, Mr. Lash explained the reason for treating such endorsements as irregular. We understand that there was a great deal of discussion before the principle was adopted by the committee. It was urged that no rule should be made which would bar out legal endorsements which these admittedly were, but the conclusion of the committee as a whole was in favour of this rule, as tending to greater care and regularity. Some of the reasons urged are quoted by Mr. Lash in the article referred to.

Rules Respecting Endorsements—Endorsement by Limited Companies.

Question 529.—Items are frequently deposited bearing the stamped endorsement of limited companies consisting of the company's name alone, without the name of any officer.

Our interpretation of paragraph 2 of the "conventions and rules" is that the name of the person, or persons, signing for a limited company must appear, whether the endorsement be stamped or written. Please say if we are right?

Answer.—Under the "conventions and rules" the name of the proper officer must appear in any endorsement, whether stamped or written.

Savings Bank Receipts—Payment to Holder.

Question 530.—A savings bank depositor signs a receipt in the usual form, but loses it in the street. The finder presents it at the bank where the account is kept and gets the

money. Have they a right to charge it to the depositor's account?

Answer.—We think not; the receipt is not an order on the bank to pay the money to the bearer, and is only a valid discharge if the money has been paid to the depositor or to someone authorized to receive the money on his behalf. If he wants the amount to be paid to another person, he should, beside furnishing the receipt, add an order to that effect.

USE OF TITLE "SAVINGS BANK" BY A LOAN COMPANY.

Question 531.—Is the use of the title "Savings Bank" by a loan company an infringement of the Bank Act under section 100?

Answer.—We think that the use of the title "Savings Bank" by a loan company is an infringement of sec. 100 of the Bank Act, unless the company has competent statutory authority for its use.

ORDERS DRAWN BY FIRM OF LUMBERMEN ON THEMSELVES. PAYABLE ON DEMAND.

Question 532.—Do orders drawn by a firm of lumbermen, or their agent at one of their depots, on themselves at their head office or on another depot, and payable to bearer on demand, come under sec. 60 of the Bank Act?

Answer.—The sole question is whether or not the orders are designed to circulate as money. If they are they come under the section; if otherwise they do not. Whether they are intended for circulation and to take the place of money, would depend on the facts, which would have to be considered in connection with each case.

SECURITY GIVEN BY THE MAKER OF A NOTE TO AN ACCOMMODATION ENDORSER AND ASSIGNED BY THE LATTER TO THE HOLDER OF THE NOTE.

Question 533.—A bank has discounted for A a note endorsed by B. A assigned to B a mortgage to secure him

for his endorsement, which mortgage B subsequently assigns to the bank as collateral security to the note. At its maturity A requests the bank to renew it, holding the mortgage as security and relea ng B. Would the bank have a valid security in the mortgage under the circumstances, and would B have any claim on or interest in the mortgage?

Answer.—B would have no claim if he were released from his liability as endorser. Whether the bank's security would be good would depend on the nature of the assignments to B and the bank. If it had been assigned t B expressly to indemnify him a gainst his liability as endorser, then the assignment would ce se to have any effect as soon as this liability came to an end, and the bank could not hold the mortgage by virtue of any rights derived from this assignment. It might have a valid claim because of its agreement with A, but in order to make the matter right the latter, whose property the mortgage is, should, by proper instrument, confirm the bank's right to hold it as security.

SECURITY HELD BY A PRIVATE BANKER PERTAINING TO NOTES LODGED AS COLLATERAL WITH A CHARTERED BANK.

Question 534.—A private banker advanced a farmer money, taking notes which he pledged to a chartered bank. Later he took a deed of the farmer's land, giving a letter saying he would re-convey land on payment of a certain sum by a certain date.

The private banker claims that he is a trustee for the chartered bank, and that the bank can follow the land in his, the private banker's name.

Could the bank follow the land, or would it be only an ordinary creditor against the private banker?

If the consideration stated in the deed was the payment of certain notes, would the chartered bank be a preferred creditor?

How could the private banker be made a preferred creditor?

No mention of the notes was made in the deed.

Answer.—The security which a private banker takes for notes discounted by him for his customer, on which notes he has obtained an advance from a chartered bank, would be held by him in trust for the bank, and the transfer of the security could probably be enforced by action of law.

The assignee in insolvency of the private banker (if there were one) could not realize on the security held, and regard the money as part of the general estate.

Whether or not the particular security enquired about attached to the notes held by the chartered bank, would be altogether a question of fact. If the chartered bank held all the paper given by the farmer, whose land had been given to the private banker as security, it would seem to be clear that the land was held to secure the bank.

The custom in some banks is to require a short memorandum to be attached to each note given to the bank as security by a private banker, for which he in turn holds security from the debtor, declaring that he holds such security in trust for the bank.

SECURITY LODGED BY PROMISSOR OF A NOTE—PAYMENT OF NOTE BY AN ENDORSER—RIGHT OF LATTER TO ACQUIRE POSSESSION OF THE SECURITY AND TO TRANSFER IT.

Question 537.—The bank holds for a certain note security from the promissor, which at the time it is hypothecated is declared to be pledged for the payment of all his present and future liabilities to the bank. The note is not paid by the promissor, but is taken up by the endorser. Subsequently the endorser borrows money from the bank on the security of the note. Can the bank legally hold it and the relative security, and can it deal with the latter on the terms covered by the letter of hypothecation?

Answer.—Our opinion is that the payment of the note to the bank by the endorser gives the latter the right to re-

ceive the note and security, and that (assuming that as between the promissor and himself the note still remains unpaid), he has the right to re-transfer the note and security to the bank as security for a loan he is getting.

The remedy given to the bank under the letter of hypothecation would continue in force according to its terms, and if wide enough to include the liability on this note there would be no legal objection to the bank proceeding under it.

MORTGAGE SECURITY TAKEN BY A BANK IN PURSUANCE OF A PROMISE MADE WHEN THE MONEY WAS ADVANCED.

Question 536.—A customer presents his note to a chartered bank for discount and offers to give at once a mortgage security. He is told that it is not necessary now, but is asked to promise to give it in a few days later if judged necessary. On his answering "yes" the note is discounted. He draws the proceeds or leaves them to his credit. Two or three days after he is asked to give the mortgage; he gives it.

Could the mortgage be successfully contested?

Answer.—We think that to discount a note on a promise that mortgage security will be given is equivalent to lending money on the security of the mortgage, and that the security would be void under the Bank Act.

MORTGAGE SECURITY TAKEN BY A BANK TO SECURE A CURRENT LOAN.

Question 537.—Can a bank take a mortgage to secure a current loan?

In event of a mortgage being taken to secure a current loan, must this then be considered as past due within the meaning of the Bank Act as affecting the Government statement?

Answer.—A bank may take a mortgage to secure any existing loan, whether the same is current or overdue. If taken for a current loan it does not make the loan past due in any sense.

Mortgage Security Taken by a Bank to Secure Old as well as New Advance.

Question 538.—A bank demands security for an existing loan, which the debtor agrees to give if a further loan is made to him. This is agreed to, and he gives a mortgage to secure the whole amount. Would such a mortgage be valid, or, if invalid as to the new portion of the loan, would it be valid to the extent of the previous advance?

Answer.—If the intentions of the parties were in good faith, and the including of the new advances was done in ignorance or by oversight, the courts would probably hold the mortgage to be valid to the extent of the original loan, but not good as to the new loan. If, however, the parties knowingly and in defiance of the law included the new advances, then it is probable that the whole might be held to be tainted with illegality, and declared wholly invalid.

Security on Standing Timber.

Question 539.—In what form should security on standing timber and timber licenses be taken under chapter 26, 1900, section 16?

This section has been placed in the copy of "The Bank Act and Amendments" (issued by the Journal) under section 74, but there does not appear to be any authority for treating it as part of that section.

Answer.—In publishing "The Bank Act and Amendments" the new matter was placed as nearly as possible in its natural position throughout the Act. This is the only reason why section 16 of the Amending Act of 1900 appears between sections 74 and 75. It is not, however, intended as an addition to section 74.

As regards the form of the security, it may be assumed that whatever is necessary under the Provincial law should be followed. In the case of timber licenses a transfer of the usual kind recorded in the Crown timber office would be necessary. In the case of timber standing on land owned by

the customer the same procedure should be followed as would be adopted if a private person were taking security on the timber.

Proper Application of Collateral.

Question 540.—A's note for $200 endorsed by B is discounted by a bank, and, upon dishonour, is paid by B the endorser. Before maturity of the note, A gives the bank a mortgage to secure this note, and another note of A's for $200, held by the bank. After B pays the note endorsed by him, the bank foreclose their mortgage security and realize $200.

Is the bank entitled to apply the whole of the $200 proceeds of the sale of the mortgage security in payment of the $200 note of A's dishonoured, but still held by the bank and unpaid, or is B entitled to receive one-half of the proceeds as being a security who has paid half of the debt for which the mortgage was given by A?

Answer.—If the mortgage is given as general security to the bank, B would have no claim on the realization. If given specifically as security for both notes, the realization requires to be divided *pro rata*.

Security under Section 74, Bank Act, on Cattle at Large on Public Range.

Question 541.—A, who is a wholesale dealer in live stock in the North-West Territories, applies to a chartered bank for an advance. They take security upon his cattle running at large on the public range under section 74 of the Bank Act, and do not register their lien. Some time after A applies to B, a private party, for a loan, offering his cattle as security, and stating they are clear. B makes a search in the registry office for the district, and finding no registrations against A, advances him the amount, taking as security a chattel mortgage on the cattle, which is duly registered. According to chapter 43, sections 6 and 11 of

the Consolidated Ordinances of the North-West Territories, 1898, as follows:

"6. Every mortgage or conveyance intended to operate as a mortgage of goods and chattels which is not accompanied by an immediate delivery and an actual and continued change of possession of the things mortgaged, shall within thirty days from the execution thereof be registered as hereinafter provided, together with an affidavit of a witness thereto of the due execution of such mortgage or conveyance, and also with the affidavit of the mortgagee or one of several mortgagees or the agent of the mortgagee or mortgagees, if such agent is aware of all the circumstances connected therewith and is properly authorized by power in writing to take such mortgage, in which case a copy of such authority shall be attached thereto (save as hereinafter provided under section 21 hereof), such last mentioned affidavit stating that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage, that it was executed in good faith, and for the express purpose of securing payment of money justly due or accruing due, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claim against him; and every such mortgage or conveyance shall operate or take effect upon, from and after the day and time of the filing thereof.

"11. In case such mortgage or conveyance and affidavits are not registered as hereinbefore provided, or in case the consideration for which the same is made is not truly expressed therein, the mortgage or conveyance shall be absolutely null and void as against creditors of the mortgagor and against subsequent purchasers or mortgagees in good faith for valuable consideration."

Who has best title to the cattle, the bank or B? Do not these provisions in the North-West Territories Ordinances override section 71 of the Bank Act?

Answer.—If the bank has taken security in the proper form under the Bank Act, and if the cattle can be sufficiently identified as being those covered by the security, the claim of the bank will prevail over that of the mortgagee.

The validity of those sections of the Bank Act, which of necessity interfere with the laws of the provinces respecting the registration of bills of sale and chattel mortgages, has been determined by the Privy Council in England. See Tennant v. Union Bank (1895), Appeal Cases 31.

SECURITY UNDER SECTION 74 OF THE BANK ACT—ADVANCE BY BANK TO TAKE UP A TRADE BILL HELD BY IT UNDER DISCOUNT.

Question 542.—A draft at ten days' date on "A," who is a customer of the bank, drawn by "B," is sent by "C," another customer, for discount and remittance of proceeds. When the bill falls due can the bank loan "A" the necessary funds on security under section 74 of the Bank Act, or must they obtain a written promise to give such security at the time of discounting the original draft?

Answer.—We think the loan granted to take up the draft must be regarded as a new transaction, and that security under section 74 can be validly taken at the time it is made, or upon a written promise given at that time.

RIGHT OF A BANK TO SET OFF A BALANCE AT CREDIT OF A CUSTOMER'S ACCOUNT, AGAINST A MATURED NOTE ON WHICH THE LATTER IS AN ENDORSER OR PROMISSOR.

Question 543.—A bank's customer dies leaving a balance at credit of his account, which is believed to be his own money. Can the bank set off against this balance the amount of two notes on which he is promissor or endorser, one of which had matured at the time of his death, and the other matured shortly afterwards?

How would it be if it were shown that although the account was in his own name the money was trust money?

Answer.—If the facts are as indicated in the first question above, the bank has the right to set off the liability as promissor or endorser on matured paper against its customer's deposit.

As to the second question, if the account stood in the customer's name simply, although the moneys were trust funds, the rule would seem to be that unless the bank had knowledge of the trust it could still exercise the right of set-off.

Right of a Bank to Hold Balance at Credit of a Customer's Account as Security for an Unmatured Note.

Question 544.—A bank discounts a note with its customer's endorsement. Before the note matures the customer dies. Has the bank the right to hold back sufficient money of any balance deceased may have had at credit, as security until the note matures, it having good reason to suppose that the maker of the note cannot pay same?

Answer.—Until the note has matured the bank has no claim against the customer's estate which it would have a right to enforce. It cannot hold back any balance at his credit.

Shareholder's Rights to Inspect the Books of a Corporation.

Question 545.—Has a shareholder in a bank or corporation a right to see the minutes of the board meetings?

Answer.—No. As far as shareholders in banks are concerned they have no right to see any of the books of the bank. Shareholders in other joint stock companies have certain rights, which, so far as the Province of Ontario is concerned, are indicated in sections 71 and 74 of "The Ontario Companies' Act."

Signature by Attorney—Correct Form of.

Question 546.—Which is correct of the following forms of signature by an attorney:

A.B.	A.B.	p. pro. A.B.
p. pro. C.D.	p. pro. C.D. Att'y.	C.D.

or is there a more correct form?

Answer.—The first form is erroneous; if it has any meaning it is that A.B. is signing on behalf of C.D.; the second is no better; the third form is quite correct and that commonly used in England. The abbreviation "p. pro." or "per pro." (*per procuratione*) signifies that the signature is affixed by the agent of and under the authority of the party whose name follows, and may be read "by authority of A.B., C.D."

There is no better form than the last quoted in the enquiry, by "A.B. per C.D." "A.B. by C.D.," "for A.B., C.D.," "A.B. by C.D. Atty," are all in common use and quite permissible; the chief point is that the form employed should clearly indicate that C.D. is acting as the agent of A.B. in the matter.

Form of Endorsement by Attorney.

Question 547.—Does a power of attorney authorizing John Jones (not a member of the firm) to sign cheques for Smith & Co'y, entitle him to sign the firm name without adding his own name or initials as attorney?

Answer.—One who is lawfully authorized to sign for Smith & Company can certainly bind them by simply signing their name "Smith & Company," but it would be unwise to accept such a signature, because it does not record the name of the person by whom it is made, or the nature of his authority.

Witnessing a Signature by Mark.

Question 548.—What does witnessing a man's mark imply, identification of the man, or merely that the witness saw the mark made?

Answer—Where the person making the mark is described in the document, the witnessing of his signature or mark implies *prima facie* that the person signing or making the mark is the person described in the document. For instance—if he were described as John Smith, lumberman, of Ottawa, the implication would be that the witness saw a John Smith, lumberman, of Ottawa, sign, or make his mark. The implication would not be conclusive; evidence would be admissible to show that the person actually signing or making his mark was not the person described in the document. If the person be not described in the document, then the witnessing of his signature or mark merely implies that the witness saw the signature or mark made by an individual of that name. The identity of the individual with the person claimed to be a party to the instrument would have to be proven.

Witnessing Signature.

Question 549.—Is it wise for the officials of a bank to witness the signature by mark of a customer or a voucher for the withdrawal of a deposit?

Answer.—It is better to have an independent witness, but this may not always be practicable. The teller who pays the items should never be permitted to sign as witness.

Signature of a Company without the Name of the Signing Officer.

Question 550.—Where a party trades under the name of a company, as for instance, "The Canadian Iron Company," is it sufficient for him to use the name of the company in his signature, without the addition of his own name?

Answer.—Legally such a signature is sufficient, but practically it is open to many objections.

Stamped Signatures.

Question 551.—The Supreme Court of Pennsylvania recently held that the fact that a bank depositor had procured

a rubber stamp which made a facsimile of his signature, was insufficient ground for charging him with a cheque on which his signature was forged by a clerk who used the stamp for the purpose.

Has a bank any right to refuse payment of cheques signed with a rubber stamp, having been instructed by the customer to pay such cheques? What protection has the bank against the danger of the stamp being used by an unauthorized party?

Answer.—If a bank consents to continue to keep the accounts of a customer who instructs it to pay cheques signed with a stamped signature, it cannot refuse to pay the cheques so signed, if otherwise in order.

As regards protection against the unauthorized use of the stamp, a bank would act very unwisely if it should oblige itself to accept such stamped signatures unless it had a contract with the customer that by whomsoever affixed, it should be regarded as his signature.

The question can hardly be regarded as having any practical bearing, as it is very unlikely that any depositor would wish to have money paid out on his account on the strength of a stamped signature.

Statute of Limitations.

Question 552.—A note was due February 10th, 1897. Will the Statute of Limitations protect you if action is taken February 11th, 1903, or must it be entered in Court on or before February 10th, 1903?

Answer.—The authorities are conflicting as to whether or not an action could have been commenced on the 10th of February, 1897. It is plain, however, that the cause of action was at all events complete on the 10th February, 1897, and that from this day the Statute of Limitations would run. As there cannot be two elevenths of February in one year, the full six years would expire on the 10th February, therefore an action begun on the 11th February, 1903, would be too late.

Item Standing for Seven Years.

Question 553.—A customer's account shows a debit entry outstanding for seven years. Assuming it to be a marked cheque, has the obligation of the bank to pay it ceased under the Statute of Limitations? The customer claims that the amount should be credited back to his account. What is the proper course to pursue?

Answer.—While the bank could not be sued on a marked or accepted cheque after the period mentioned, it would nevertheless be contrary to the usual practice of banks to take advantage of this defence. We think, therefore, that unless it can be established that the cheque never passed out of the drawer's hands, he should not have the amount refunded to him. If he passed the cheque away and got value for it, he clearly has no further interest. He has no right to insist on the bank sheltering itself behind the Statute of Limitations, and it is also to be remembered that something may have happened to interrupt prescription of which the record has been lost, *e.g.*, the holder may have written to the bank asking if the marking still held good, and may have had such a reply as would establish a new date from which the statute runs.

It Depends upon Circumstances.

Question 554.—When a party's whereabouts cannot be ascertained, and a note against him is entered in court to prevent it from becoming outlawed, what is the limit of time allowed before any further steps must be taken, and, if there is a limit of time, what must be the next proceedings?

Answer.—The answer to this question depends entirely upon the practice of the particular court in which the action is entered. It would serve no useful purpose to discuss mere questions of procedure in court, as there is no principle involved, and the rules of the court may at any time be altered by the judge. We therefore give no answer to this question.

STERLING DRAFT ON LONDON, ENFACED PAYABLE AT A BANK IN SAN FRANCISCO.

Question 555.—If a bill is drawn in sterling from Dunedin, N. Z., on London, England, and enfaced payable at the Bank of in San Francisco, does the San Francisco bank then became the drawee of the bill, and can the bill be protested for non-payment in San Francisco? Would your answer apply equally to a draft drawn from Montreal on Toronto, and enfaced payable in Hamilton, where there is no conversion of sterling into dollars?

Answer.—If by the phrase "enfaced payable at a bank in San Francisco" is intended such a crossing as is commonly used in Canada, it is in effect only a request that the San Francisco bank will negotiate the draft, which we would not consider an integral part of the instrument. That being the case the bill is not payable at the office of the San Francisco Bank, and is not dishonoured if they will not comply with the request.

A draft drawn in Montreal on a bank in Toronto, crossed with the request that some other bank will pay it in Hamilton, is not, in our opinion, thereby made payable at the latter point. If the request is not complied with the only result that would follow, so far as we can see, would be that the purchaser might have a claim for damages against the drawer, for failure of an implied understanding that the draft would be paid to him in Hamilton.

It is the custom in Canada to permit certain large financial institutions to place a memorandum on their cheque forms to the following effect: "This cheque is not negotiable (or payable) at par at any office of the bank of Canada."

It has long been settled that encashment of such a cheque by a branch of the bank other than that on which it is drawn, is only a negotiation of it, and we should suppose the "enfacement" to which you refer to be of the same character.

There are occasional cases here where a cheque drawn by a customer is marked "good" by the drawee bank, and

crossed by it with instructions to another branch of the bank to pay the same. This we should regard as a domiciliation by the acceptor of the cheque, and it would probably be dishonoured if not paid in accordance with such instructions.

Value of 30 and 90-Day Sterling Bills Based on the Rate for Demand and 60-Day Bills

Question 556.—The current rate for demand sterling bills is 9 7-8 and for 60 days 9 1-8. What should a 90-day bill and 30-day bill be worth at the same time, and how would you make it out?

Answer.—The difference between a demand and a 60-day bill represents the interest on the money and the stamp; the latter on any bill payable on demand is 1d., while for 60-day or other term bills it is 1s. per £100, say 1-20 of 1 per cent.

The interest rate that governs is, speaking loosely, the current market rate for banker's bills in London. This might be higher for 90-day than for 60 or 30-day bills, so that no arbitrary rule can be named, but assuming that interest rates are alike for the different terms, the rate should work out about as follows:

Demand rate (on your hypothesis) 9 7-8 per cent.

60-day rate (on your hypothesis) 9 1-8 per cent.

The difference of ¾ per cent. represents 1-20 stamp and 63 days' interest at about 4 per cent. per annum.

On this basis a 30 or 90-day bill would be worth as much less than demand as 33 or 90-days' interest at the above rate would amount to.

Bank Stocks Held "in Trust"—Trustees and the Double Liability.

Question 557.—A trustee accepts a transfer of stock in a bank, describing himself as a trustee but without stating for whom. In case there should be a call for the double liability would he be personally responsible?

Answer.—Yes. See section 44 of the Bank Act.

Power of Attorney Held by Brokers Authorizing Bank Officers to Transfer Bank Stock.

Question 558.—Is the manager justified in acting on a power of attorney from a shareholder of the bank, which authorizes him to sell and transfer certain of its shares on behalf of the shareholder, and to receive the consideration money, etc., when the same is handed to him by a broker, with the request that the transfer be made to his nominee, the proceeds of the shares not being paid to the manager on behalf of the shareholder, but being left to be disposed of by the broker?

Answer.—We think that a bank officer would not be justified in acting on such a power of attorney in the way mentioned. If as a matter of fact the shareholder did not get the proceeds from the broker, the officer acting as attorney would probably be responsible to him therefor, unless he could show that the broker had authority from the shareholder to receive the money.

It is not unusual for such powers of attorney to be given, but we think the banker should require in every case that they should be accompanied by a letter from the shareholder, indicating how they are to be used.

Stock in an American Bank Taken as Security for Advances Made by a Bank in Canada.

Question 559.—(1) Referring to sec. 64 of the Bank Act, may a Canadian bank legally lend money on the security of shares in an American bank?

(2) If not, and if such security were taken for an existing overdraft, would the security be released as soon as in the ordinary course of business the credits in the account aggregated the amount of the overdraft at the date upon which the security was taken,—notwithstanding that the debit entries during the same period were sufficient to keep the overdraft from being reduced?

Answer.—We are of opinion that section 64 applies to the stock of a bank in the United States as well as to stock

in Canadian banks, and that a bank here cannot lawfully lend money on the security of such stock. It can, of course, take security on bank stock, as on any other property, for an existing indebtedness.

(2) To what extent such security, if taken for an existing overdraft would be affected by further transactions in the account would depend on the agreement between the parties, and would not be affected by the terms of the section of the Bank Act quoted above. Under the ordinary rules credits in an overdrawn account would be imputed to the earlier debits, so that the debt existing at any time might be wiped out by later deposits, and the later cheques would create a new debt. There is, however, nothing to prevent the bank having an agreement with the customer that moneys deposited to the credit of an overdrawn account shall not be imputed as a payment on an earlier debt, and this agreement may be express or may be implied from the course of dealing.

Transfer of Stocks Held in Trust.

Question 560.—In Mr. Maclaren's work on banking, in commenting on section 43 of the Bank Act, he says: "The person who stands in the books of the bank as the registered owner of shares, has the right to deal with them and transfer them. If, however, he holds them in trust, to the knowledge of the directors or officers of the bank, and is about to commit a breach of trust, they should notify the *cestui que trust* in order that he may take steps to prevent it by injunction, or otherwise."

In this connection I should like to ask the editing committee of the Journal the following:

(1) Would the bank have the right to absolutely refuse to transfer pending action by the *cestui que trust?*

(2) If the *cestui que trust* were a minor, or a person not having exercise of his rights, or if the bank had no knowledge of his whereabouts, would they have the right to refuse to transfer?

Answer.—We think that Mr. Maclaren's statement above quoted is too wide, if, in saying that the bank should notify the *cestui que trust*, it is meant that it is the bank's duty to do so. Probably all Mr. Maclaren meant was that it would be a prudent or proper thing for the bank to do; not that it was under any legal obligations to do so.

Section 43 of the Bank Act declares that "the bank shall not be bound to see to the execution of any trust, whether express, implied or constructive, to which any share of its stock is subject." In commenting upon the same words in the charter of the Molsons Bank, the Privy Council, in the case of Simpson v. Molsons Bank, reported in L. R., App. C. 1895, p. 270, say: "This language is general and comprehensive. It cannot be construed as referring to trusts of which the bank had not notice, for it would require no legislative provision to save the bank from responsibility for not seeing to the execution of a trust, the existence of which had not in some way been brought to their knowledge. The provision seems to be directly applicable to trusts, of which the bank had knowledge or notice, and in regard to these the bank, it is declared, are not to be bound to see to their execution."

We do not see how it could be held, in the face of the express provision that the bank shall not be bound to see to the execution of any trust, and in the face of the decision of the Privy Council, that this provision is directly applicable to trusts of which the bank has knowledge, that the bank is bound to interfere with any transfer which the shareholder sees fit to make.

Dealing with the case apart from the provision of the statute, and this is the way in which Mr. Maclaren evidently has dealt with it, the Privy Council say: "It may be that notice to the bank of the existence of a trust affecting the shares would have cast upon them the duty of ascertaining what were the terms of the trust. . . . Assuming this point in favour of the appellants, their Lordships, however, see no reason to doubt that by the clause in question the bank are

relieved of the duty of making enquiry, and that they cannot be held responsible for registering the transfer, unless it were shown that they were at the time possessed of actual knowledge which made it improper for them to do so, until at least they had taken care to give the beneficiaries an opportunity of protecting their right." It will be observed that this is "apart from the provision of the statute."

Answering our correspondent's first question, we would point out that the statute, although relieving the bank from the obligation to see to the execution of any trust, does not deprive the bank of any right which as a corporation it would have with respect to the transfer of its shares, and if it possessed actual knowledge that the proposed transfer would be a breach of trust, it would, we think, have the right to refuse to allow the transfer to be made, until at all events the *cestui que trust* had an opportunity of protecting his rights, and this would be a prudent and proper thing to do; but, should it turn out that the bank's opinion as to the breach of trust was unfounded, it would have to take the consequences of refusing to allow the transfer.

With reference to the second question, we think that the bank's right to refuse the transfer would depend upon whether a breach of trust would be committed or not. The fact that the *cestui que trust* was a minor, etc., or that the bank had no knowledge of his whereabouts, would not affect the question one way or the other.

It is possible that, notwithstanding the statute, the bank might incur a liability if the circumstances connected with the transfer and the breach of trust were such as to warrant the Court in holding that the bank really and knowingly joined in committing the breach, but short of this we think it could not be made liable for permitting the transfer to be made.

Stock Transfers.

Question 561.—Referring to Question 226, Article 1706 of the Civil Code of Lower Canada provides that "an agent employed to buy or sell a thing cannot be the buyer or seller

of it on his own account." Does not a transfer or acceptance of stock imply a sale or purchase? What then if a bank allows A to transfer stock to himself in trust, or as attorney?

Answer.—The article quoted has reference only to an agent's powers as between himself and his principal. It has no bearing on the point in the question.

Stock Transfers.

Question 562.—(1) Is it legal for a person holding shares in a bank to transfer them to his own name in trust, and *vice versa?*

(2) Can a firm transfer stock to one of the parties composing it and *vice versa?*

(3) Can an attorney transfer stock to himself?

(4) Can the same person act as authority in making a transfer and also as attorney for the transferee in accepting the same transfer?

(5) Can a shareholder transfer stock to any person, and accept it for the latter under power of attorney?

Answer.—(1) The first is quite in order. The party can transfer to himself in trust simply, or to himself in trust for some named person or fund.

The converse case, of transferring trust shares to himself, might be legal, but the bank might be responsible to the *cestui que trust* if the transfer were wrongfully made. We think, notwithstanding the protection given by the Act as to trusts, banks cannot altogether avoid responsibility when they permit trustees to convert assets which are clearly trust property to their own use.

(2) If all the members of the firm join, a transfer to one of the partners is quite in order, but there is the same objection to one partner transferring partnership shares to himself, as there is to a trustee transferring to himself personally.

There is no objection to the converse procedure. One partner holding stock can certainly transfer it to his firm.

(3) This is no doubt legal, but it is open to the same difficulties as are involved in the transfer of trust stock to the trustee personally. The practice should not be permitted, unless the power of attorney expressly authorizes it by the use of such a phrase as "to transfer to himself or any other person." Brokers in Toronto generally have some such phrase in their forms.

(4) There is no objection to this.

(5) This also seems to us quite proper.

The only point we think that needs to be carefully remembered in dealing with these matters is that an agent, attorney, trustee, or other person standing in a fiduciary capacity, has no right to use this power for his own benefit without the express sanction of the parties concerned, and that if a bank lends itself to any act contrary to this principle, those who suffer may be able to fix responsibility upon it.

Succession Duties in Quebec—Bank Deposit.

Question 563.—A person dies, having a deposit with a bank in the Province of Quebec exceeding three thousand dollars. Can the executor or administrator transfer the amount before succession duties are paid?

If succession duties were not paid, would the bank be liable for such duties?

Answer.—We are advised in this matter as follows:

(1) An executor cannot give a valid title before succession duties are paid.

(2) The bank would not be liable for such duties. But, under certain circumstances, an action in damages would lie against them, if they were knowingly parties to an illegal act, such as the transfer above referred to.

Sunday—Note Dated on.

Question 564.—"A contract made on Sunday is void." Supposing a note dated on Sunday falling due is not paid, can the maker release himself of the obligation—or if the

owner could prove by witness that it was done in error, would it bind him to pay it?

Answer.—It is not quite true to say literally that "a contract made on Sunday is void." Certain contracts so made are void (see *e.g.*, the "Lord's Day Act" as to the law in Ontario). The Bills of Exchange Act expressly declares that a note is not invalid because dated on Sunday, and a holder in due course need not trouble himself on this point at all. The maker might possibly defend an action brought by the party to whom he gave a note dated on Sunday on the ground that the sale for which the note was given was void because made on Sunday, if that were the fact, and that therefore as between himself and the payee, the note was not good for want of consideration. But such a defence would not be good against a third party holding for value.

SECURITY GIVEN BY THE MAKER OF A NOTE TO AN ACCOMMODATION ENDORSER AND ASSIGNED BY THE LATTER TO THE HOLDER OF THE NOTE.

Question 565.—A bank has discounted for A a note endorsed by B. A assigns to B a mortgage to secure him for his endorsement, which mortgage B subsequently assigns to the bank as collateral security to the note. At its maturity A requests the bank to renew it, holding the mortgage as security and releasing B. Would the bank have a valid security in the mortgage under the circumstances, and would B have any claim on or interest in the mortgage?

Answer.—B would have no claim if he were released from his liability as endorser. Whether the bank's security would be good would depend on the nature of the assignments to B and the bank. If it had been assigned to B expressly to indemnify him against his liability as endorser, then the assignment would cease to have any effect as soon as this liability came to an end, and the bank could not hold the mortgage by virtue of any rights derived from this assignment. It might have a valid claim because of its agreement with A, but in order to make the matter right the

latter, whose property the mortgage is, should, by proper instrument, confirm the bank's right to hold it as security.

Instructions by Wire "to Notify and Pay"—Neglect to Notify—Liability.

Question 566.—A New York bank instructs a Halifax bank by wire as follows: "Notify and pay A, $1,000." Through oversight A was not notified, and, according to his statement, lost a valuable contract through not receiving the money. Has he any claim on the Halifax bank or the N. Y. bank for the loss incurred?

Answer.—A clearly has no right of action against the Halifax bank. Whether he would have a claim against the New York bank, or the New York's customer who was sending the money, would depend altogether on the facts.

Under ordinary circumstances, and in the absence of any special arrangement or understanding, the New York bank would probably not be under any liability to the party to whom the money was to be transmitted, and, of course, the Halifax bank could not be held responsible if the New York bank was not. The question is, however, one which could only be answered with a full knowledge of all the facts.

Telegraphic Request to Hold Funds for a Cheque.

Question 567.—Do you consider it safe for a bank to hold funds which are at a customer's credit, on a telegraphic request from another bank which is about to cash the customer's cheque? What would be the result if another cheque should be dishonoured before the first cheque was presented? What if the cheque for which the funds were held proved to be forged, or if payment were countermanded by the drawer?

Answer.—This is one of the practices which as a practice is found to work very well, but in theory is quite indefensible. A bank cannot accept or pay a cheque until it is actually presented, and notwithstanding such a telegraphic request or promise, the money is still at the customer's credit, and he has a right to say what shall be done with it. The

refusal of another cheque under the circumstances mentioned might therefore expose the bank to a claim by the customer for damages, and this would be the result whether the cheque telegraphed about were forged or not, or if it were subsequently countermanded.

Telegraphic Transfers.

Question 568.—A bank at E. F.'s request sends this telegram to a correspondent: "Notify and pay to A.B. ten thousand dollars to be applied on account of C. and D. bonds." The money is paid by the correspondent to A.B. with directions to apply as above, but A.B. does not apply it as directed. Can the bank or its correspondent be held responsible by E.F., on the ground that the correspondent should have seen that the money was applied as directed?

Answer.—We think not. The instructions were to pay the money to A.B., and to inform him of the application to be made of it. If these instructions were carried out the matter would rest entirely between E.F. and A.B.

Trust Companies.

Question 569.—Why do trust companies in Canada require such large paid-up capitals? How do they employ their money?

Answer.—Trust companies doubtless find that their business and credit are best subserved by having large capitals, and paid-up rather than partially paid, because of the liability attached to the latter. The Government returns show that investments are made of the capital.

Trust Funds Deposited in a Private Bank.

Question 570.—A solicitor or trustee deposits a client's money in a private bank, without instructions from the parties interested. In case of loss would he be held personally responsible?

Answer.—This would depend altogether on the facts. If, *e.g.*, there were no better place of deposit available, and the

alternative would be to retain the money in his own house at risk of robbery, and if the other circumstances made the course one which any prudent man would adopt in dealing with his own moneys, the trustee would probably not be under personal responsibility.

Unclaimed Dividends.

Question 571.—Section 88 of the Bank Act requires a return to be made annually of all dividends which have remained unpaid beyond five years. Are not such dividends, as arrears of interest, outlawed in many of the provinces under provisions respecting prescription?

Answer.—Under sec. 90 of the Bank Act the liability of the bank to repay moneys deposited, with the interest, if any, and to pay dividends declared on its capital stock, is exempt from the operation of the Statute of Limitations or any law relating to prescription. This clause is retroactive.

United States Revenue Stamps.

Question 572.—Has a bank in the United States any right to require its Canadian correspondent to affix a United States revenue stamp to a draft upon it?

Answer.—We think the bank has a perfect right to lay down the conditions on which it will allow customers to draw cheques upon it. The correspondent must, if the drawee bank makes it a condition of the opening or continuance of the account, bear the cost of the stamp, and the bank may properly require it to be affixed before the drafts are presented.

United States Stamp Duty—Express Company Money Orders.

Question 573.—The express companies are not affixing a two-cent stamp to their orders payable in United States, allowing the payee to meet this expense. By this means they are attracting much of the smaller draft business formerly done by the Canadian banks. Are they within the Act regulating this matter?

Answer.—If these orders are issued in Canada the American Act does not apply to the issuers, but only to the drawees, who would be bound to stamp them before payment. If they were issued in the United States without being stamped it would of course be a violation of the law.

As regards the effect of this in the way of competition, we would suppose that the payees would object to being made to pay the 2c. stamp duty, and that in the long run the charge would come back on the purchasers of the orders.

Unpaid Bill Charged to Endorser's Account with Notice to Him, but without Protest.

Question 574.—Is not a banker justified in charging an unpaid bill to the endorser's account, provided there are funds, without first protesting it, if he notifies the endorser by mail that he has done so, and would not such notice act as a notice of dishonour within the meaning of the Bills of Exchange Act?

Answer.—The bank would certainly be entitled to charge the endorser's account without protest with a dishonoured bill, provided it notified the endorser that the bill is dishonoured. Whether or not the notice mentioned was sufficient for this purpose would depend on its terms. If the latter is so framed as to indicate that the bill has been dishonoured by non-payment this notice is sufficient. (See section 49, sub-sec. E. Bills of Exchange Act.) It is probable that a mere statement in the letter that the bill had been charged to the customer's account would be held to sufficiently indicate its dishonour.

Liability of Vessel Owner for Cost of Cargo Purchased by the Master of the Vessel.

Question 575.—Can a master of a schooner, not being owner or part owner, make a vessel liable for the cost of a cargo of grain? If he buys a cargo, giving in payment a draft on a third party not interested in the vessel, can the holder in the event of dishonour look to the vessel or her owners?

Answer.—We think the master has no power to make the vessel liable for the cost of purchasing a cargo.

TIME DURING WHICH A BANK SHOULD PRESERVE VOUCHERS.

Question 576.—By section 90 of the Bank Act it is provided that the liability of a bank to repay moneys deposited and interest, shall continue notwithstanding any statute of limitations or any enactment or law relating to prescription. Since in an ordinary business account, not prescribed, it is requisite that proofs of the claim shall be produced in case of contestation, does it not follow in view of the above mentioned section that a bank should preserve indefinitely all vouchers for transactions in a customer's account, or the verifications of the account given by the depositor?

Answer.—The point to which our correspondent draws attention is very important. Even before the last revision of the Bank Act it was doubtful if the Statute of Limitations would run in favour of a bank from the date of the last transaction in an account—indeed it was probably the law then that prescription of a claim would only count from the time at which a demand had been made.

The present position of the law does in our opinion make it more essential still that the bank shall keep the vouchers connected with its deposit accounts, practically forever.

NOTE WITH TWO OR MORE ENDORSERS DISCOUNTED FOR THE LAST ENDORSER, WITH WAIVER OF PROTEST, ETC.

Question 577.—A note is discounted by a bank for a customer who endorses it, waiving protest, notice and demand of payment. There is a prior endorser on the note. The bank did not protest the note at maturity, and the first endorser was released. Is its claim against its customer good? He alleges that notwithstanding his waiver the bank should have protested the bill in order that he might not lose his recourse against the prior endorser, and that he is discharged by their neglect to do this.

Answer.—The customer by his waiver made himself liable to pay the note in the event of its dishonour without

any conditions whatever, and this liability is not impaired in any way by the fact that the prior endorser has been discharged.

SECTION 74, BANK ACT—ADVANCES ON ASSIGNMENTS AND WAREHOUSE RECEIPTS CLEARED OFF FROM PROCEEDS OF BILLS OF EXCHANGE NEGOTIATED BY THE BANK, AND REPRESENTING A SALE OF THE GOODS HELD AS SECURITY.

Question 578.—A customer, who is a produce dealer and warehouseman, has advances secured by assignments under section 74, and by warehouse receipts given by other warehousemen. He sells us certain bills of exchange on English houses, these being secured by warehouse receipts (his own and others) which are to be retained here by us until the goods are ordered forward by drawees. Out of the proceeds or purchase price of the bills he pays off his advances.

When the goods are ordered forwarded by the drawees we are to exchange the warehouse receipts for the bills of lading, and send them on to be surrendered on payment of the drafts. We hold a written promise from our customer that he will give security under section 74, or by transferring to us warehouse receipts or bills of lading for any advances we make him.

(1) Seeing that new money for the bills of exchange does not pass from us to him, except by way of credit on a previous indebtedness, are the warehouse receipts attached thereto validly acquired, apart from the written promise?

(2) Is the party's own warehouse receipt a valid security, and if not, are we under any obligation to the drawees in respect thereto?

(3) Would the bills of lading received in exchange for the warehouse receipts be validly acquired?

Answer.—(1) The question assumes that the bills were sold to the bank. If so, the rights of the bank are limited to its rights as holders of these bills, and of the security with them. We think there is no doubt that the securities in such

case be validly acquired. The purchase of a bill of exchange drawn by a customer on another party, with documents attached, is a new transaction, notwithstanding that the proceeds of the draft are used to pay off a previous indebtedness.

(2) Under the Bank Act a warehouse receipt must be given by a person not the owner of the goods. The customer's own receipt, therefore, covering his own goods, would not be a valid security in the hands of the bank. The bank would not, however, be under any obligation to the drawees with respect to the security, unless it should make a statement or representation which might be held to amount to a warranty, or unless there were fraud on the part of the bank.

(3) The bills of lading received in exchange for the valid warehouse receipts would be validly acquired, but we do not think that sub-section 2 of section 75 could be relied on in so far as the bill of lading is substituted for an invalid warehouse receipt. As regards the latter, the bank's rights depend on the written promise referred to. If this is sufficient to cover the acquisition of the bill of lading after the negotiation of the bill of exchange, it would no doubt be a valid security in the hands of the bank.

Warehouse Receipts.

Question 579.—Is not the description of the place where goods are stored an essential point in a warehouse receipt? The statement of Mr. Lash in his article (Vol. II., p. 71 of the Journal), would seem to indicate that the description is necessary.

Answer.—In the statement mentioned Mr. Lash has reference to security under sec. 74, which, to be valid, must comply strictly with the terms of the Act. These are, among other requirements, an assignment in the form given in Schedule C. (which provides for a statement of the place where stored) or in a form "to the like effect." If a form were used which contained no reference to the place, it could scarcely be said to be "to the like effect."

A warehouse receipt, on the other hand, is defined as "Any receipt given by any person for any goods, wares or

merchandise in his actual, visible and continued possession, as bailee thereof in good faith, and not as his own property."

Nothing is said as to the place of storage, and there are only two conditions laid down: that it shall be receipt given for goods belonging to another, and that they shall be in the actual possession of the one who gives it.

Goods Hypothecated under Section 74.

Question 580.—In advancing money on security under 74, it is difficult to ascertain the amount of the goods hypothecated. Is the following a sufficient description: "All the lumber (or whatever the produce may be) held in my yard at , being all the lumber belonging to me?"

Answer.—Unless the lumber or other goods can be specially described, it is best to use such a general description as that referred to by you. In Ontario the chattel mortgage cases have settled conclusively that a general or blanket description, if properly worded, is valid.

In this connection we beg to refer you to the article written by Z. A Lash, Q.C., entitled "Warehouse Receipts, Bills of Lading and Securities, under Section 74 of the Bank Act, 1890," which appears on page 54, Volume 11 of the Journal.

Section 74 again—Goods in Warehouse, etc.

Question 581.—A firm of commission merchants have as part of their business a large warehouse, part of which they use as a bonded warehouse. They sell on commission as agents for various manufacturers and producers in the United States and in Europe, meats, salts, agricultural implements, sugar, and various other lines of merchandise. Their capital is largely invested in their warehouse, and they are therefore sometimes obliged to borrow to settle customs duties on goods ordered for local clients, or to enable them to carry consignments. They wish to protect the bank making the advances and purpose doing it by assigning to the bank certain goods, their own property, purchased on

their own account and sold by them from time to time to the trade. In what form can the proposed assignment be made, and in what shape can the bank legally accept it? Can the firm give a security receipt seeing the goods assigned are in their own warehouse?

Answer.—Such security would have to be taken under section 74 of the Bank Act, and we do not think any of the above commodities come under its provisions.

Warehouse Receipt for Goods in Bond.

Question 582.—Can a warehouseman properly issue a warehouse receipt within the meaning of the Bank Act for goods in bond; or, in other words, are goods in bond in the "actual, visible and continued possession" of the warehouseman?

Answer.—We are of opinion that a warehouse receipt cannot be given for goods in bond, as they are in the possession of an officer representing the Crown.

The Customs' Act permits of the transfer of the property in the goods, and it would no doubt be practicable in some way to get security, but it cannot be by way of warehouse receipt.

Warehouse Receipts for Goods in Bond.

Question 583.—In your reply to question 582 you say that "no doubt it would be practicable in some way to get security" for goods in bond, but that it cannot be by way of warehouse receipt. Would you indicate in what way you think this could be done?

Answer.—With reference to the above it seems clear that advances on the security of warehouse receipts for goods in bond are in a somewhat precarious position. There is, however, this to be said: That as between the warehouseman and the merchant, the warehouse receipt might be held good, and that while not under the Act a warehouse receipt which a bank could acquire under section 73, it might possibly acquire the receipt as collateral security under section 68 as

for a debt already contracted; but in Ontario questions would arise not only under the Bank Act, but also under the Chattel Mortgage Act.

There is no difficulty in the matter of goods in bond, in cases where security can be taken under section 74. An assignment in accordance with Schedule "C" would be quite good whether the stuff is in bond or not, assuming it to be right in other respects.

Section 74, Bank Act—Loans to Farmers against Cattle.

Question 584.—(1) May a bank lend to a farmer against cattle under section 74 (2), Bank Act?

(2) Would a farmer who buys and sells cattle in considerable numbers be considered a wholesale dealer in live stock within the meaning of section 74 (2), Bank Act?

Answer.—(1) Not as a farmer.

(2) We do not think the number of cattle handled by a farmer settles the question of his being or not being a wholesale dealer. (An attempt was made at Ottawa to include in this section a definition of the word "wholesale," the point having come up for discussion among the bankers, then with the Government and afterwards in the House, but it was deemed best to leave the section as it is.)

Section 74, Bank Act— Meaning of "Wholesale" Dealer.

Question 585.—Section 74 of the Bank Act allows banks to take security from wholesale manufacturers, wholesale purchasers, shippers and dealers. Does this section admit of taking security under it from those who are known as "middlemen?"

Answer.—Many middlemen would be classed as wholesale dealers, and as such would come within the terms of section 74, if the business engaged in were one to which the section applies. The question could not, however, be definitely answered without fuller information.

Promise to Give Security under Sections 73, 74 and 75 of the Bank Act.

Question 586.—A grain dealer gives the bank a promise in writing to the following effect: "In consideration of the bank making advances to me from time to time in connection with my grain business, I hereby engage to hand the bank as security therefor, bills of lading, warehouse receipts, or pledges under sections 73, 74 and 75 of the Bank Act."

Would this agreement give the bank a preferred claim in the event of the customer's failure?

Answer.—A written promise of this kind, unless followed up by the actual delivery of the security, would have no effect in the event of the customer's failure. We also have some doubts whether a promise in this form is sufficient to support the subsequent transfer to the bank of the securities mentioned. We think something more specific, both as to the loans and as to the security, is necessary.

Security under Section 74 of the Bank Act—Written Promise to Give Security.

Question 587.—In the fall of the year a firm of lumbermen make application to a bank for advances to be made during the ensuing winter, to enable them to carry on lumbering operations.

The firm sign a written request, addressed to the bank, which reads, in effect, as follows:

"We request you to advance us such money as may be necessary to enable us to get out about ten million feet of lumber during the season 1900-1901; in consideration of the advances so to be made, we agree to give you security upon the logs or the timber or the product thereof, and to furnish you, upon demand, with a cove receipt therefor, or other security under the Bank Act."

At the time that this request is made, no money is advanced.

During the winter, notes of the firm are discounted by the bank, and at different times during the season, as logs are drawn on to the shores of a certain lake, cove receipts and security under section 74 of the Bank Act are given.

At the time the notes are negotiated there is no delivery of the security or written promise.

The written promise is anterior to any advance. The cove receipts are not contemporaneous with the negotiation of the notes, but subsequent.

Is this method of procedure within the provisions of sections 73, 74 and 75 of the Bank Act?

Answer.—The form, although somewhat general in its terms, would, we think, be sufficient to support the after acquisition of the security mentioned in it. The logs or timber which could be taken as security would be limited to the 10,000,000 feet of lumber or thereabouts "got out" by the customers during the season of 1900-1901, and the debt for which the security might be taken would be limited to advances made within the terms of the promise.

Warehouse Receipts.

Question 588.—Referring to pages 62 and 63, Vol. II., of the Journal, Mr. Lash states: "The distinction between a debt and other liability is well known to the law. For instance, the liability of a guarantor is not a debt, but should the guarantor supplement his guaranty by payment, a debt would then arise; a bank therefore could not acquire or hold a warehouse receipt or bill of lading as collateral security for a liability which it might incur as the guarantor of a customer."

What is the position of a bank in the following case? The London (Eng.) agent accepts a 60-day draft drawn by some firm there under a credit established by one of the bank's branches in Canada. The branch gives up the draft and receives a warehouse receipt for the goods. Is the bank a guarantor, no payment having been made at the time of

acquiring the warehouse receipt, and the acceptance in London not maturing for some time?

Answer.—The question asked is one which it is very difficult to answer definitely. At one time, as stated in the article quoted from, banks were authorized to take the warehouse receipts as security for a liability incurred by the bank on behalf of the holder, etc. This provision was afterwards deliberately dropped, and there is nothing in the present Act which empowers banks to acquire bills of lading or warehouse receipts as security for outstanding drafts drawn under letters of credit on which they are liable, and a bank's rights to hold the documents must depend upon considerations entirely apart from the warehouse clauses of the Act.

The general clause (section 64) under which banks are authorized to engage in any business pertaining to banking might be regarded as giving them power to acquire security in connection with letters of credit, the issue of which is beyond question part of their recognized business, but the concluding part of the section prohibiting the lending of money directly or indirectly on the security of the goods, except as provided in the Act, would seem to cut out such transactions from the powers covered by this section.

This question has been up for discussion many times, and the conclusion hitherto has usually been that the bank's rights, though not clear under the Act, are made reasonably certain by the circumstances which ordinarily prevail. The goods are shipped to the bank; they have never become the property of the customer, and could not so become until he pays the relative draft (or rather the title would not pass), and no creditor could attach the goods while the title to them is in the bank. They may be regarded as still subject to the vendors' rights, and the bank represents the vendors, having procured the payment to them of the purchase money and taken over the goods.

This is not very satisfactory, and an effort is not unlikely to be made to amend the Act in this and certain other directions.

There is one point to which we might draw special attention. If the documents were handed to the customer and the goods warehoused in his name, the assignment of the warehouse receipt to the bank might not give it a good title. The best practice would be for the bills of lading to be handed to the railway or shipping company, with instructions to deliver the goods at some warehouse on behalf of the bank, thus keeping the bank's title intact throughout.

Warehouse Receipts, Assignments, and Chattel Mortgages.

Question 589.—(1) Section 74 of the Bank Act appears to deal only with wholesale manufacturers, wholesale purchasers or shippers. Can a bank take from others security of the same kind and upon similar terms as if a private person were making the advance? (2) Can a bank take security of a different kind than that mentioned in section 75 from the class dealt with by section 74, *i.e.*, wholesalers, etc.? (3) Can a bank take security in the form prescribed in section 73 from persons who are not wholesalers or shippers? (4) Can a bank take security for future advances from wholesalers, etc., in the form of a chattel mortgage? (5) Need a bank register chattel mortgages for protection against other creditors?

Answer.—(1) A bank cannot take security such as that described in section 74, except from persons that come within the descriptions contained in the first and second clauses.

(2) (3) A bank can take security under section 73 or section 68 from any debtor, whether he comes under the descriptions in section 74 or not.

(4) A bank cannot take security by way of chattel mortgage for future advances, except possibly as suggested below.

(5) A bank's rights under chattel mortgage are precisely the same as the rights of other parties, and they must register securities if they are to be good against other creditors.

It is probable that the security taken under section 74 might be in the form of chattel mortgage. On this point we think the view expressed in La Banque d'Hochelaga v. Merchants Bank of Canada case, referred to on page 382, Volume II. of the Journal, is sound:

"I agree with the contentions of the plaintiff's counsel that in lending money to the classes of persons and upon the security of the goods mentioned in s. 74, the bank is not limited to taking security in the form set out in the schedule, but may take it in any manner known to the law. The section is directed chiefly to transactions of a certain nature. It occurs among a number of provisions defining the powers of banks and the nature of the business which they may transact. There was in the more general section (64) a qualified prohibition against lending upon such security, and section 74 empowers the bank to lend to certain persons upon certain security otherwise prohibited by section 64. The clause as to the form is permissive only, and was probably designed for the convenience of banks, that they might draw up such securities for themselves without a solicitor's assistance, and feel that a long mortgage was unnecessary. That clause cannot, I think, control the general enabling powers contained in the earlier portions of the section. It is true that I interpret section 64 as meaning that, except as authorized by the Act, a bank shall not lend on certain security. But this has to do with the substance and not with the forms of transactions, and if no form were authorized it could not be said that the earlier part of section 74 would be inoperative."

It should, however, be said that expressions made use of elsewhere, where the point was not directly involved, indicate that there may be a difference of opinion in the courts respecting this matter.

Section 74, Bank Act—Inapplicable to Private Bankers.

Question 590.—Would an assignment of merchandise to a private banking firm drawn in the form provided in

Schedule C to the Bank Act, 1890, hold good as against judgment creditors of the assignor? Does the said form of security come under the Bills of Sale Act and consequently require registration when taken by other than a chartered bank?

Answer.—The provisions of the Bank Act are applicable only to chartered banks, and a private bank could not validly acquire unregistered security in the form of Schedule C of the Bank Act. In the Province of Ontario a private banker is enabled to acquire warehouse receipt security under the provisions of an Act entitled "The Mercantile Amendment Act," but we do not know of any similar legislation in other provinces.

Security under Section 74, Bank Act, on "all" the Goods in a Particular Place.

Question 591.—The security under section 74 which we have taken from our customers reads:

"All the lumber in our yard situated on Victoria Street, and also that in our yard on Peter Street."

There is a very great deal more lumber than is necessary to cover the advance. Would such security be good against other creditors? Is it not defective inasmuch as it does not mention any quantity, and could not the debtor sell practically all the lumber in each yard and still be within the law?

Answer.—We do not think the description is defective. (See Mr. Lash's article on "Warehouse Receipts, Bills of Lading and Securities under Section 74 of the Bank Act," page 54, Vol. 11 of the Journal. This security would be good against creditors if otherwise properly taken. The fact that there is a great deal more lumber than is necessary to cover the advance does not affect this question. The absence of a reference to the quantity does not enable the debtor to sell any part of the lumber assigned. The effect of the assignment is to vest in the bank the ownership of the lumber as it was at the time the assignment was given, and the

customer would have no right to remove any lumber thereafter without the bank's consent.

Security Taken for Current Advances.

Question 592.—Can banks legally take security under section 68 of the Bank Act, to secure current liabilities (business or accommodation paper under discount, but not yet matured).

Answer.—There is no doubt of a bank's right to take security for an unmatured debt under section 68 by way of mortgage on real estate or chattels.

Security under Section 74 of the Bank Act. Taken from a Wholesale Manufacturer and Wholesale and Retail Dealer in Cigars.

Question 593.—(1) Can a bank make advances to a wholesale dealer in tobacco and cigars, who is also a manufacturer of cigars, under section 74 of the Bank Act and Amendments?

(2) How would you answer the above question if the party was, besides being a wholesale dealer and manufacturer, a retailer of tobacco and cigars?

Answer.—(1) If he is a "wholesale manufacturer" of cigars a bank can under the first clause of section 74 make him advances on the security of the cigars manufactured by him, or of the goods, etc., which he has procured for the purpose of manufacturing cigars. If he is a "wholesale dealer" in tobacco in its unmanufactured state he would be a dealer in products of agriculture under sub-section 2, and could give security on such products.

(2) The fact that he is a retailer as well as a manufacturer and wholesale dealer would not affect the question, but he could not give security on the stock bought for his retail business.

Security under Section 68 of the Bank Act.

Question 594.—Would section 68 of the Bank Act permit the taking of a mortgage on a vessel for a loan made simultaneously?

Answer.—The section referred to authorizes a bank to take a mortgage "as additional security for a debt contracted to the bank in the course of its business." The latter part of section 64 declares that the bank "shall not either directly or indirectly lend money on the security of any ships." It is clear that the power given in section 68 cannot be used in contravention of section 64, and if the mortgage were given simultaneously with the loan it would require very special circumstances to convince the court that section 64 had not been contravened.

Securities under Section 74 of the Bank Act.

Question 595.—A bank gives credit to a grain buyer, and arranges, for his convenience, to cash his grain tickets, taking a note and security under section 74 covering the grain, whenever the amount paid reaches a certain sum. Would it be best for the bank to open two accounts, one for the grain tickets paid, to be credited with the proceeds of notes when security is taken, the other for credits for proceeds of grain sold, and debits showing the application of the proceeds of the grain on the notes? Would the security in such a case be valid?

Answer.—There might be some advantage, in the way of keeping a fuller record of transactions, in having two such accounts, but we do not think that the validity of the security would be affected thereby, one way or the other. That depends on all the facts in connection with the account, and the mere division of the entries could not make any difference.

The payment of the customer's grain tickets, assuming that he has not provided money in advance for the purpose, constitutes the loan, which is afterwards to be secured by assignments under section 74. It is therefore essential that

before paying any grain tickets the bank should hold from the customer a written promise to give security.

Security under Section 74 of the Bank Act.

Question 596.—A bank agrees to make an allowance to Brown Bros. on the security of hogs. The hogs are the property of the firm, but are in possession of Robert Brown, one of the partners. Should the assignment under sec. 74 of the Bank Act be taken from Robert Brown or from the firm?

Answer.—The assignment must be taken from the owner of the goods, in this instance from the firm of Brown Bros. It is not necessary that the goods should be in the owner's possession in order to validate the assignment, but the name of the person in whose possession they are should be mentioned, as also the place or places where the hogs are kept.

Securities under Section 74 of the Bank Act.

Question 597.—Can a company having a Dominion charter borrow on the security of goods under section 74 of the Bank Act without limitation as to the amount?

Answer.—If the company is incorporated under the Companies' Act, and gives its own promissory notes with security under section 74, there would seem to be no limit to the amount which it may borrow. See amendment to the Companies' Act, cap. 27, 1897. If it should borrow in any other way, as for instance by overdraft, the limitation in the Act would apply.

If the company has a special charter, its power to borrow would depend on its own charter, or the general law if no special provisions as to borrowing were contained in the charter.

Security under Section 74 of the Bank Act.

Question 598.—A bank advances money to buy hides, taking security on the same under section 74; the bank and the customer agree that the latter may manufacture them

into gloves without prejudice to the bank's security. Will the bank's security cover the gloves while in process of manufacture or after completion, or would it be necessary to take a chattel mortgage to protect the bank?

Answer.—We think that under section 76 of the Bank Act an assignment or security under section 74 would continue to cover the goods described in it during the process of manufacture, and would hold the manufactured goods after the completion of the same.

A chattel mortgage would not improve the matter unless there were some irregularity in the security under section 74; the assignment under section 74 could only in the case mentioned be attacked on the score of its validity under the Act, and in a simple case such as you put that risk should amount to nothing.

Security under Section 74 and Chattel Mortgage Acts.

Question 599.—In section 72 of the Bank Act a lien acquired by a bank on ships is subject to the law of the Province. No mention of the Provincial laws is made in section 74. Must security taken under this section be registered, if the Provincial laws require such registration?

Answer.—No. The powers given by the Bank Act under section 74 override any provisions in the Provincial Statutes respecting the registration of liens.

Security under Section 74 of the Bank Act.

Question 600.—A bank has made advances for which it holds security, under section 74, on logs on the banks of a certain river within a defined timber limit. The logs have to be removed in the spring. Should the bank at the time of making the loan take a written promise to give security on the logs when they have been moved down the river, or will it be sufficient to have an endorsement on the original security to the effect that the logs therein described are now in a certain boom and held to the order of the bank?

Answer.—The bank's rights to hold the logs as security is not affected by their removal, and no other or further security is necessary. A statement to the effect that the logs are now stored in a certain boom might be useful as evidence, but other credible evidence would serve as well. We do not think that any statement of the kind should be endorsed on the security itself; the less that is interfered with the better. It should be borne in mind that the original description must be of such a nature as to enable the bank to identify the logs, even although their location should be changed, and if any change takes place in the location of the logs the bank should be put in possession of evidence of the change.

Security under Section 74 of the Bank Act—Substituted Grain.

Question 601.—In the case of an advance secured by a pledge of grain, under section 74, would the security hold good against a seizure by the sheriff under execution, if the precise grain on which the advance was made had been removed, and other grain of a like character substituted? What decisions have been given on the subject?

Answer.—No case dealing directly with the point has come up, but the following cases bear upon it: Bank of Hamilton v. Noye Manufacturing Company, 9 Ont. 631; Re Goodfellow, Traders Bank v. Goodfellow, 19 Ont. 299; Llado v. Morgan, 23 U. C. C. P. 524. It is difficult to say what view the courts would take in a case of substitution under section 74, but if you are able to examine the cases quoted you will probably be able to see to what extent the courts would be likely to attach the security to the substituted grain in the case you mention.

Warehouse Receipt Security Acquired for an Overdraft without a "Written Promise."

Question 602.—A customer's account has been overdrawn for some days, an advance by way of overdraft having been granted without having a written promise to give security.

If a note is subsequently discounted, with a warehouse receipt attached for the purpose of covering the overdraft, is the bank's title to the warehouse receipt good?

Answer.—On the bare statement of facts here submitted we would think that the warehouse receipt has not been validly acquired. It was not acquired when the loan was made, and there was no "written promise" to validate a transfer after the loan had been made.

Warehouse Receipt Forms.

Question 603.—Is the following form of warehouse receipt good from a bank's point of view? It differs materially from the usual bank form:

'Received in store from A.B., 83 large cheese marked "'H' to be delivered to the order of A.B. to be endorsed "hereon.

"Blanktown, 18th August, 1899. C. D. & Co."

Answer.—We think this is a valid form of receipt. The points in which it differs from the form usually employed by banks, as for example in regard to a statement of the place where the goods are stored, or that they are to be held until delivery pursuant to order, are not essential.

Warehouse Receipts.

Question 604.—A, a resident of Ontario, sells to B a quantity of goods which B duly pays for, but asks A to keep for him until they are required. B subsequently wishes to borrow on the security of the goods, and A gives him a warehouse receipt for them. Can a bank, by lending money on the security of this warehouse receipt, acquire a good title to the property, or would there be a flaw in it owing to the fact that the sale had not been accompanied by a change of possession? No bill of sale was given.

Answer.—Under the Ontario Statutes respecting Bills of Sale and Chattel Mortgages, a sale of goods unaccompanied by delivery or change of possession would not be good

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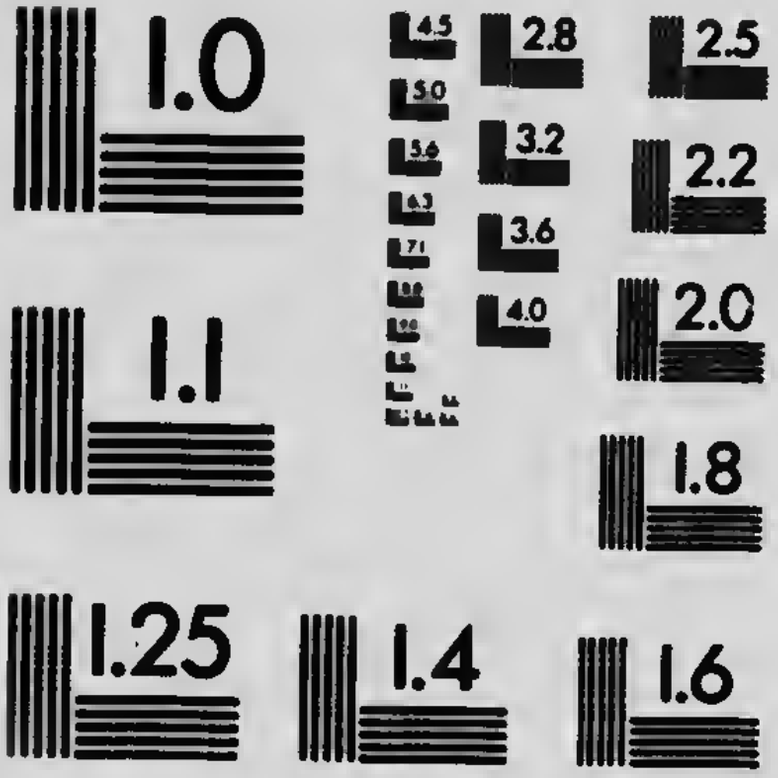

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as against creditors of the vendor, unless there were a registered bill of sale. The bank in the case stated would acquire the purchaser's title, that is a title subject to the above defect; good against the vendor, but not against the vendor's creditors. Of course as a basis for an advance, this might be all that the bank requires.

Warehouse Receipts Issued by a Limited Liability Company.

Question 605.—Are warehouse receipts given by a limited liability company legal? If so, who would be responsible if the receipts contained misstatements or were issued in fraud?

Answer.—Such warehouse receipts would be legal if the powers of the company under its charter were wide enough to enable it to issue them. We could not say who would be responsible for the misstatements or fraud without knowing the circumstances. Each case would depend upon the circumstances surrounding it.

Warehouse Receipt for Grain, etc. Provincial Laws Limiting Right of Pledges to Hold.

Question 606.—The Quebec Statutes provide that where a warehouse receipt or bill of lading for grain, etc., is held as security, such grain, etc., shall not be held in pledge for any period exceeding six months. Does this provision affect banks?

Answer.—The rights of banks in this matter are governed by the Bank Act, which no longer limits the time during which grain, etc., may be held by the bank as security. The provisions in the Provincial Acts on this point do not affect banks.

Warehouse Receipts, etc., Signed by Attorney.

Question 607.—(1) Do banks take warehouse receipts or assignments under section 74 of the Bank Act, signed by attorney?

(2) If the goods were made away with, could the principal be prosecuted criminally?

Answer.— (1) We think it is the practice of banks to take warehouse receipts or securities under section 74 given by the customer's attorney, and that such practice is proper and necessary.

(2) The customer would be liable criminally for doing away with the goods, unless he was unaware of the fact that his attorney had given security to the bank. The attorney would also be liable criminally if he personally should dispose of the goods improperly.

Warehouse Receipts Given under Ontario Mercantile Amendment Act.

Question 608.—A private banker acquires security on wheat in the owner's possession, by a warehouse receipt which is valid under the Ontario Mercantile Amendment Act. The private banker thereupon endorses the receipt to a chartered bank as security for an advance. Is the bank's security good, and, if not, how can it be made good?

Answer.—The bank would not, in such a case, acquire any rights in the wheat. It can only get security on goods in the owner's possession in the manner authorized by the Bank Act. If the owner in the case mentioned were a person authorized to give security under section 74, the bank could make him a direct advance, on the endorsement or guarantee of the private banker, and take direct security under section 74.

Acquisition of Warehouse Receipts or Bills of Lading.

Question 609.—Which do you think is the preferable method of acquiring title to warehouse receipts or bills of lading; a transfer by endorsement of the party to whom the goods are deliverable, or a provision in the warehouse receipt or bill of lading making the goods deliverable to the order of the bank?

Answer.—We do not think there is any difference in the effect of the two modes of acquiring title.

Witnessing Signature.

Question 610.—Is it wholesome practice for the officials of a bank to witness the signature by mark of a customer on a voucher for the withdrawal of a deposit?

Answer.—It is better to have an independent witness, but this may not always be practicable. The teller who pays the items should never be permitted to sign as witness.

Witnessing a Signature by Mark.

Question 611.—What does witnessing a man's mark imply, identification of the man, or merely that the witness saw the mark made?

Answer.—Where the person making the mark is described in the document, the witnessing of his signature or mark implies *prima facie* that the person signing or making the mark is the person described in the document. For instance—if he were described as John Smith, lumberman, of Ottawa, the implication would be that the witness saw a John Smith, lumberman of Ottawa, sign or make his mark. The implication would not be conclusive; evidence would be admissible to show that the person actually signing or making his mark was not the person described in the document. If the person be not described in the document, then the witnessing of his signature or mark merely implies that the witness saw the signature or mark made by an individual of that name. The identity of the individual with the person claimed to be a party to the instrument would have to be proven.

RULES AND REGULATIONS RESPECTING CLEARING HOUSES.

MADE IN PURSUANCE OF THE POWERS CONTAINED IN THE ACT TO INCORPORATE THE CANADIAN BANKERS' ASSOCIATION.

1. The chartered banks doing business in any city or town, or such of them as may desire to do so, may form themselves into a Clearing House. Chartered banks thereafter establishing offices in such city or town may be admitted to the Clearing House by a vote of the members.

2. The Clearing House is established for the purpose of facilitating daily exchanges and settlements between banks. It shall not either directly or indirectly be used as a means of obtaining payment of any item, charge or claim disputed, or objected to. It is expressly agreed that any bank receiving exchanges through the Clearing House shall have the same rights to return any item, and to refuse to credit any sum which it would have had were the exchanges made directly between the banks concerned, instead of through the Clearing House; and nothing in these or any future rules, and nothing done, or omitted to be done thereunder, and no failure to comply therewith, shall deprive a bank of any rights it might have possessed had such rules not been made, to return any item or refuse to credit any sum; and payment through the Clearing House of any item, charge or claim shall not deprive a bank of any right to recover back the amount so paid.

3. The Annual Meeting of the members shall be held on such day in each year, and at such time and place as the

members may fix by by-law. Special meetings may be called by the Chairman or Vice-Chairman whenever it may be deemed necessary, and the Chairman shall call a special meeting whenever requested to do so in writing by three or more members.

4. At any meeting each member may be represented by one or more of its officers, but each bank shall have one vote only.

5. At every Annual Meeting there shall be elected by ballot a Board of Management who shall hold office until the next Annual Meeting, and thereafter until their successors are appointed. They shall have the general oversight and management of the Clearing House. They shall also deal with the expenses of the Clearing House, and the assessments made therefor. In the absence of any member of the Board of Management he may be represented by another officer of the bank of which he is an officer.

6. The Board of Management shall at their first meeting after their appointment, elect out of their own number a Chairman, a Vice-Chairman, and a Secretary-Treasurer, who shall perform the duties customarily appertaining to these offices.

The officers so selected shall be respectively the Chairman, Vice-Chairman, and Secretary-Treasurer of the Clearing House.

Should the bank of which the Chairman is an officer be interested in any matter, his powers and duties shall, with respect to such matter, be exercised by the Vice-Chairman, who shall also exercise the Chairman's duties and powers in his absence.

7. Meetings of the Board may be held at such times as the meetings of the same may determine. A special meeting shall be called by the Secretary-Treasurer on the written requisition of any member of the Clearing House for the con-

sideration of any matter submitted by it, of which meeting 24 hours' notice shall be given, but if such meeting is for action under Rules 15 or 16, it shall be called immediately.

8. The expenses of the Clearing House shall be met by an equal assessment upon the members, to be made by the Board of Management.

9. Any bank may withdraw from the Clearing House by giving notice in writing to the Chairman or Secretary-Treasurer between the hours of 1 and 3 o'clock p.m., and paying its due proportion of expenses and obligations then due. Said retirement to take effect from the close of business of the day on which such notice is given. The other banks shall be promptly notified of such withdrawal.

10. The Board of Management shall arrange with a bank to act as clearing bank for the receipt and disbursement of balances due by and to the various banks, but such bank shall be responsible only for the moneys and funds actually received by it from the debtor banks, and for the distribution of the same amongst the creditor banks, on the presentation of the Clearing House certificates properly discharged. The clearing bank shall give receipts for balances received from the debtor banks. The Board of Management shall also arrange for an officer to act as Manager of the Clearing House from time to time, but not necessarily the same officer each day.

11. The hours for making the exchanges at the Clearing House, for payment of the debit balances to the clearing bank, and for payment out of the balances to the creditor banks, shall be fixed by by-law under clause . On completion of the exchanges, the balances due to or by each bank shall be settled and declared by the Clearing House Manager, and if the clearing statements are readjusted under the provisions of these rules, the balances must then be similarly declared settled, and the balances due by debtor banks must be paid into the clearing bank, at or during the hours fixed by by-law as aforesaid, provided that no credit balance, or

portion thereof, shall be paid until all debit balances have been received by the clearing bank. At Clearing Houses where balances are payable in money they shall be paid in legal tender notes of large denominations.

At Clearing Houses where balances are payable by draft, should any settlement draft given to the clearing bank not be paid on presentation, the clearing bank shall at once notify in writing all the other banks of such default: and the amount of the unpaid draft shall be repaid to the clearing bank by the banks whose clearances were against the defaulting bank on the day the unpaid draft was drawn, in proportion to such balances. The clearing bank shall collect the unpaid draft, and pay the same to the other banks in the above proportion. It is understood that the clearing bank is to be the agent of the associated banks, and to be liable only for moneys actually received by it.

Should any bank make default in paying to the clearing bank its debit balance, within the time fixed by this rule, such debit balance and interest thereon shall then be paid by the bank so in default to the Chairman of the Clearing House for the time being, and such Chairman and his successor in office from time to time shall be a creditor of and entitled to recover the said debit balance, and interest thereon from the defaulting bank. Such balances, when received by the said Chairman or his successor in office, shall be paid by him to the clearing bank for the benefit of the banks entitled thereto.

12. In order that the clearing statements may not be unnecessarily interfered with, it is agreed that a bank objecting to any item delivered to it through the Clearing House, or to any charge against it in the exchanges of the day, shall, before notifying the Clearing House Manager of the objection, apply to the bank interested for payment of the amount of the item or charge objected to, and such amount shall thereupon be immediately paid to the objecting bank. Should such payment not be made the objecting bank may notify the Clearing House Manager of such objection and non-payment,

and he shall thereupon deduct the said amount from the settling sheets of the banks concerned, and readjust the clearing statements and declare the correct balances in conformity with the changes so made, provided that such notice shall be given at least half an hour before the earliest hour fixed by by-law, as provided in clause 11, for payment of the balances due to the creditor banks. But notwithstanding that the objecting bank may not have so notified the Clearing House Manager, it shall be the duty under these rules of the bank interested to make such payment on demand therefor being made at any time up to 3 o'clock; provided, however, that if the objection is based on the absence from the deposit of any parcel or of any cheque or other item entered on the deposit slip notice of such absence shall have been given to the bank interested before 12 o'clock noon, the whole, however, subject to the provisions of Rule No. 2.

13. All bank notes, cheques, drafts, bills and other items (hereafter referred to as "items") delivered through the Clearing House to a bank in the exchanges of the day, shall be received by such bank as a trustee only, and not as its own property, to be held upon the following trust, namely upon payment by such bank at the proper hour to the clearing bank of the balance (if any) against it, to retain such items freed from said trust; and in default of payment of such balance, to return immediately and before 12.30 p.m., the said items unmarked and unmutilated through the Clearing House to the respective banks, and the fact that any item cannot be so returned shall not relieve the bank from the obligation to return the remaining items, including the amount of the bank's own notes so delivered in trust.

Upon such default and return of said items, each of the other banks shall immediately return all items which may have been received from the bank so in default, or pay the amount thereof to the defaulting bank through the Clearing House. The items returned by the bank in default shall remain the property of the respective banks from which they were received, and the Clearing House Manager shall adjust the settlement of balances anew.

A bank receiving through the Clearing House such items as aforesaid, shall be responsible for the proper carrying out of the trust upon which the same are received as aforesaid, and shall make good to the other banks respectively all loss and damage which may be suffered by the default in carrying out such trust.

14. In the event of any bank receiving exchanges through the Clearing House making default in payment of its debit balance (if any), then in lieu of its returning the items received by it as provided by Rule 13, the Board of Management may require the banks to which the defaulting bank, on an account being taken of the exchanges of the day between it and the other banks, would be a debtor, in proportion to the amounts which, on such accounting, would be respectively due to them, to furnish the Chairman of the Clearing House for the time being with the amount of the balance due by the defaulting bank, and such amount shall be furnished accordingly, and shall be paid by the Chairman to the clearing bank, which shall then pay over to the creditor banks the balances due to them in accordance with Rule 11. The said funds for the Chairman shall be furnished by being deposited in the clearing bank for the purpose aforesaid. The defaulting bank shall repay to the Chairman for the time being or to his successor in office, the amount of such debit balance and interest thereon, and the said Chairman, and his successor in office, shall be entitled to recover the same from the defaulting bank. Any moneys so recovered shall be held in trust for and deposited in the clearing bank for the benefit of the banks entitled thereto.

15. If a bank neglects or refuses to pay its debit balance to the clearing bank, and if such default be made not because of inability to pay, the Board of Management may direct that the exchanges for the day between the defaulting bank and each of the other banks be eliminated from the Clearing House Statements, and that the settlements upon such exchanges be made directly between the banks interested, and not through the Clearing House. Upon such direction being

given the Clearing House Manager shall comply therewith and adjust the settlement of balances anew, and the settlements of the exchanges so eliminated shall thereupon be made directly between the banks interested.

16. Should any case arise to which, in the opinion of the Board of Management, the foregoing rules are inapplicable, or in which their operation would be inequitable, the Board shall have power at any time to suspend the clearings and settlements of the day; but immediately upon such suspension the Board shall call a meeting of the members of the Clearing House to take such measures as may be necessary.

17. Every Clearing House now existing, or that may hereafter be established, may enact by-laws, rules and regulations for the government of its members, not inconsistent with these rules, and may fix therein among other things:

(1) The name of the Clearing House;

(2) The number of members of the Board of Management and the quorum thereof;

(3) The date, time and place for the Annual Meeting;

(4) The mode of providing for the expenses of the Clearing House;

(5) The hours for making exchanges, and for payment of the balances to or by the clearing bank;

(6) The mode or medium in which balances are to be paid.

Any by-law, rule, or regulation passed or adopted under this clause may be amended at any meeting of the members, provided that not less than two weeks' notice of such meeting, and of the proposed amendments, has been given.

CONVENTIONS AND RULES RESPECTING ENDORSEMENTS.

Adopted by the Council of the Canadian Bankers' Association on the 26th February, 1898, under authority of a resolution passed at the annual meeting of the Association, 6th October, 1897.

Mode of Endorsement.

1. An endorsement may be either written or stamped, in whole or in part.

Regular Endorsements.

2. A regular endorsement within the meaning of these Conventions and Rules must be neither restrictive nor conditional, and must be so placed and worded as to show clearly that an endorsement is intended.

If purporting to be the endorsement of the person or firm to whom the item is payable (whether originally or by endorsement), the names must correspond, subject, however, to section 32, sub-sec. 2, of the Bills of Exchange Act, which is as follows:—

> "Where in a bill payable to order, the payee or "endorsee is wrongly designated, or his name is mis-"spelt, he may endorse the bill as therein described, "adding his proper signature; or he may endorse by his "own proper signature."

If purporting to be the endorsement of a corporation, the name of the corporation and the official position of the person or persons signing for it must be stated.

If purporting to be made by some one on behalf of the endorser, it must indicate by words that the person signing has been authorized to sign; *ex gr.*, "John Smith, by his attorney, Thomas Robinson," or "Brown, Jones & Co., by Thomas Robinson, their attorney," or "Per Pro. or P.P. the Smith Brown Company, limited, Thomas Robinson."

Irregular Endorsements.

3. An endorsement, other than a restrictive endorsement, which is not in accordance with the foregoing definition of a regular endorsement, or which is so placed or worded as to raise doubts whether it is intended as an endorsement, is an irregular endorsement within the meaning of these Conventions and Rules.

Restrictive Endorsements.

4. Section 35 of the Bills of Exchange Act defines a restrictive endorsement as follows:—

> "An endorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as for example, if a bill is endorsed 'pay D only,' or 'pay D for the account of X,' or 'pay D or order for collection.'"

The following further examples shall be treated as restrictive endorsements within the meaning of these Conventions and Rules, without prejudice, however, to their true character, should the question arise in court, viz.:—

"For deposit only to credit of ....."
"For deposit in .....bank to credit of ....."
"Deposited in .....bank for account of....."
"Credit ....bank."

Form and Effect of Guarantee

5. A guarantee of endorsements shall be in the following form or to the like effect:—

"Prior endorsements guaranteed
by .....(name of bank)."

It may be written or stamped, but shall be signed in writing by an authorized officer of the bank giving it.

By virtue of such guarantee and of these Conventions and Rules, the bank giving same shall return to the paying bank the amount of the item bearing the guarantee, if, owing to the nature of any endorsement, or its being forged or unauthorized, it should appear that such payment was improperly made.

Endorsement by Depositing Bank.

6. When one bank deposits with or presents for payment to another bank (whether through the Clearing House or otherwise) a bill, note or cheque, the item so deposited or presented shall bear the stamped open endorsement of the depositing or presenting bank. Such stamp shall contain the name of the bank, its branch or agency, and the date, and shall for all purposes be the endorsement of the depositing or presenting bank, and, except as hereinafter specified, no further or other endorsement shall be required, whether the item be specially payable to the bank or otherwise, or be payable at the chief office or elsewhere.

Restrictively Endorsed Items.

7. If a bill, note or cheque bearing a restrictive endorsement be so deposited or presented, the depositing or presenting bank shall *ipso facto*, and by virtue of these Conventions and Rules, be deemed to have guaranteed such endorsement in accordance with section 5 hereof, and shall be liable to the paying bank to the same extent as if such guarantee had been actually placed upon the item, but payment may, notwithstanding, be refused until the restriction be removed.

Irregularly Endorsed Items.

8. If a bill, note or cheque, bearing an irregular endorsement as above defined, be so deposited or presented, the depositing or presenting bank shall endorse thereon the guarantee referred to in section 5 hereof, but payment may, notwithstanding, be refused until the irregularity be removed.

Letters of Credit, Deposit Receipts, etc.

9. When a letter of credit, deposit receipt, or other item not negotiable, and to which the provisions of the Bills of Exchange Act do not apply, is so deposited or presented, a receipt and indemnity in the following form, or to the like effect, shall be written or stamped thereon, signed in writing by an authorized officer of the presenting or depositing bank, viz.:—

"Received amount of within from the within named bank, which is hereby indemnified against all claims hereunder by any person."

Agreement as to Practice.

10. While it is understood that in general, for convenience of the depositing or presenting bank, no objection will be made to a restrictive endorsement, or to an irregular endorsement if the guarantee above provided for be given, yet in view of the responsibility which a depositing or presenting bank incurs in connection therewith, each bank undertakes to make all reasonable efforts to have all endorsements on items deposited or presented by it made regular in order that its customers and the public generally may ultimately be led to adopt a regular and uniform system.

It is also understood that endorsements regularly made within the meaning of these Conventions and Rules shall not be objected to except for special reasons to be assigned with the objection.

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